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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 12

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION.

No. 27

UNITED STATES OF AMERICA, APPELLANT,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION.

No. 28

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

NO. 307 FILED AUGUST 10, 1956
NO. 502 FILED OCTOBER 11, 1956
NO. 503 FILED OCTOBER 11, 1956
PROBABLE JURISDICTION NOTED DECEMBER 10, 1956

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[fol. 1] PLACITA

PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of June (it being the 4th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Six and of the Independence of the United States of America, the 180th Year.

Present: Honorable John P. Barnes, Chief District Judge, Honorable William H. Holly, District Judge, Honorable Philip L. Sullivan, District Judge, Honorable Michael L. Igoe, District Judge, Honorable William J. Campbell, District Judge, Honorable Walter J. La Buy, District Judge, Honorable J. Sam Perry, District Judge, Honorable Win G. Knoch, District Judge, Honorable Julius J. Hoffman, District Judge

Roy H. Johnson, Clerk, William W. Kipp, Sr., Marshal

Thursday, June 14, 1956

Court met pursuant to adjournment

Present: Honorable Elmer J. Schnackenberg, United States Circuit Judge, Honorable Philip L. Sullivan, United States District Judge, Honorable Walter J. La Buy, United States District Judge

[fol. 3] [File endorsement omitted]

[fol. 4] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 56-C-

Suit under Sec. 1336, Title 28 USC, To Set Aside And Enjoin Enforcement of Order of Interstate Commerce Commission

---

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, Defendants.

COMPLAINT—Filed April 13, 1956

Plaintiffs, the State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association, file this complaint against defendants, United States of America, Interstate Commerce Commission, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company (referred to herein as "Milwaukee Road").

I.

The Purpose Of The Suit

1. The purpose of this suit is to set aside, and to enjoin the enforcement of, an order of the Interstate Commerce [fol. 5] Commission dated March 2, 1956 (and the prior report and order dated November 21, 1955, upon which the order of March 2, 1956 was based) fixing intrastate rates of fare for suburban passenger service between Chicago and Illinois state line, on the so-called "North Line," and between Chicago and Elgin, Illinois, on the so-called "West Line" of the Milwaukee Road.

II.

Jurisdiction and Procedure

2. The jurisdiction of this Court is conferred by Section 1336 of Title 28 USC, and the procedure herein is governed by Sections 1398, 2284, 2321, 2322, 2323, 2324 and 2325 of Title 28 USC.

III.

Parties

3. Plaintiff, Illinois Commerce Commission, is an administrative agency of the State of Illinois, created under an act entitled, "An Act Concerning Public Utilities," approved June 29, 1921, as amended (Ch. 111-2/3, Ill. Rev. Stat. 1955) herein called Illinois Public Utilities Act. Illi- [fol. 6] nois Commerce Commission is charged with the duty, among other things, of fixing and regulating the intrastate fares charged by railroads for the transportation of persons within the State of Illinois. Plaintiffs, Illinois Commerce Commission and the State of Illinois, maintain offices in Chicago, Illinois, in this District.

4. Plaintiff, Milwaukee Road Commuters' Association, is an Illinois corporation not for profit organized by, and for the benefit of, commuters using the suburban service of the Milwaukee Road between Chicago and certain suburban municipalities and communities in Illinois along the North and West Lines above referred to.

5. The United States of America is made a defendant pursuant to Section 2322 of Title 28, USC (c. 646, June 25, 1948, 62 Stat. 969), and its agency, the Interstate Commerce Commission is joined with it as defendant.

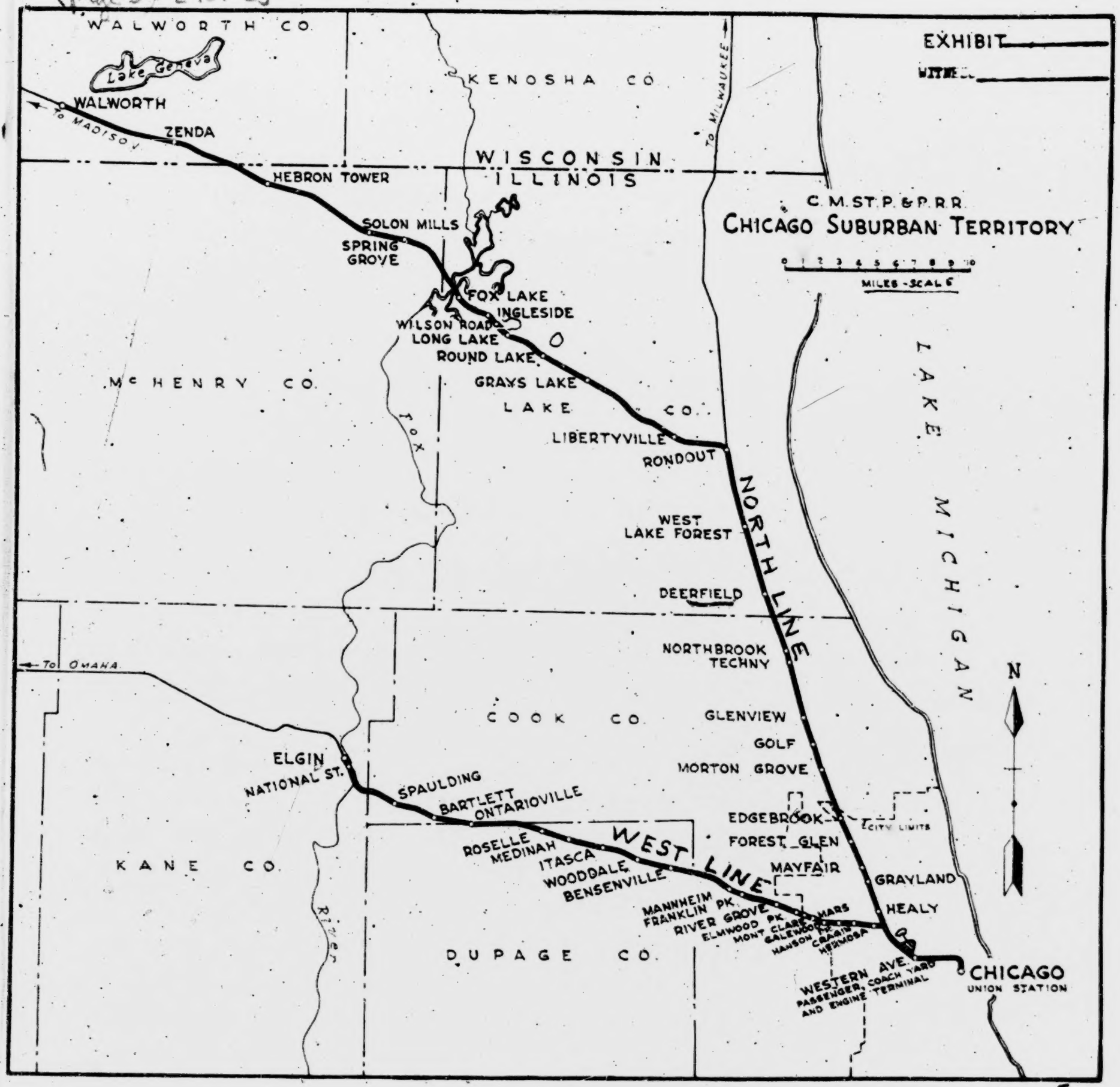
6. The Milwaukee Road, also made a defendant, is a Wisconsin corporation with its principal office at Chicago, Illinois. The Milwaukee Road operates a railroad through Illinois and Wisconsin and other states as a common carrier of passengers and property both in intrastate and [fol. 7] interstate commerce, and is a public utility within the meaning of that term as used in the statutes of Illinois and of the United States.

IV.

Suburban Passenger Routes Involved

7. Milwaukee Road operates a suburban passenger service along a line from Chicago to the north (herein called "the North Line") and another line from Chicago to the west (herein called "the West Line"). The following diagra-matic map shows the routes of the North Line and the West Line and the suburban communities served.

(page 5) [Fol. 8]


WALWORTH CO
Lake Geneva
WALWORTH
TO MADISON
ZENDA
KENOSHA CO
TO MILWAUKEE
WISCONSIN
ILLINOIS
HEBRON TOWER
SOLON MILLS
SPRING GROVE
FOX LAKE
INGLESIDE
WILSON ROAD
LONG LAKE
ROUND LAKE
GRAYS LAKE
McHENRY CO
LAKE CO
Fox
LIBERTYVILLE
RONDOUT
NORTH LINE
WEST LAKE FOREST
DEERFIELD
NORTHBROOK
TECHNY
TO OMAHA
COOK CO
GLENVIEW
GOLF
MORTON GROVE
ELGIN
NATIONAL ST.
SPAULDING
BARTLETT
ONTARIOVILLE
EDGEBROOK
CITY LIMITS
FOREST GLEN
MAYFAIR
GRAYLAND
HEALY
ROSELLE
MEDINAH
ITASCA
WOODDALE
BENSENVILLE
WEST LINE
MANNHEIM
FRANKLIN PK.
RIVER GROVE
ELMWOOD PK.
MONT CLARE
GALEWOOD
HANSON PK.
MARS
CRAGIN
HERMOSA
KANE CO
DUPAGE CO
River
WESTERN AVE.
PASSENGER, COACH YARD AND ENGINE TERMINAL
CHICAGO
UNION STATION
LAKE MICHIGAN
N
EXHIBIT
WITNESS
C.M.ST.P.&P.R.R.
CHICAGO SUBURBAN TERRITORY
0 1 2 3 4 5 6 7 8 9 10
MILES - SCALE

[fol. 9] 8. As shown in the foregoing map, the West Line extends from Chicago to Elgin and is entirely in Illinois. The North Line extends to Walworth and Zenda in Wisconsin. This complaint relates to the entire West Line and to the portion of the North Line that is in Illinois.

V.

The Proceeding Before The Interstate Commerce Commission

9. The proceeding before the Interstate Commerce Commission (Docket No. 31742) was instituted by petition of the Milwaukee Road (a copy of which is hereto attached as Exhibit A, and incorporated herein) filed in February, 1955, entitled, "Petition for Investigation Under Section 13 of Illinois Intrastate Fares Between Points on Chicago, Milwaukee, St. Paul and Pacific Railroad Company and for Permission to Increase Interstate Fares between Illinois and Wisconsin Points on said Railroad, within the Chicago Suburban Area." The petition alleges:

(a) That the Illinois Commerce Commission is vested with the jurisdiction over intrastate passenger fares in Illinois;

[fol. 10] (b) That on July 24, 1952, the Milwaukee Road filed an application with the Illinois Commerce Commission for authority to increase its suburban passenger fares, and to discontinue certain suburban trains;

(c) That after extensive hearings on the application, the Illinois Commerce Commission, on November 10, 1954 (3 months before the filing of the petition with the Interstate Commerce Commission, attached hereto as Exhibit A) issued an order (below identified as Exhibit F, attached) denying the application and refusing to give authority to the Milwaukee Road to increase its fares over those established by that Com-

mission in November, 1951, or to discontinue any of its suburban trains;

(d) That by that order, the Illinois Commerce Commission, the State of Illinois required the Milwaukee Road to continue operation of its suburban trains, out of Chicago and in Illinois, at an out-of-pocket loss in excess of $700,000, and at a fully distributed loss of $1,600,000 per year, "causing disadvantage to and undue, unreasonable and unjust discrimination against interstate commerce and shippers of interstate commerce, in violation of Sections 13(1) and 13(4) of the Interstate Commerce Act."

(e) That the Milwaukee Road proposed to fix its suburban fares at stated amounts resulting in an increase of 30% to 40% over the existing fares as fixed by the Illinois Commerce Commission.

The Petition then prays:

(f) That the Interstate Commerce Commission conduct an investigation under Section 13 of the Interstate Commerce Act and find "that the aforesaid intrastate coach fares within the Chicago suburban area made or imposed by the authority of the State of Illinois
[fol. 11] cause, and will continue to cause disadvantage to and undue, unreasonable, and unjust discrimination against interstate commerce, and shippers in interstate commerce, in violation of the provisions of Paragraph 1 of Section 3, and Paragraph 4 of Section 13 of the Interstate Commerce Act;"

(g) That the Interstate Commerce Commission direct the Milwaukee Road to increase its intrastate fares to the rate proposed, or to a higher rate, and to raise its interstate suburban fares [to Walworth and Zenda, Wisconsin] accordingly; and

(h) That orders in the prior cases before Interstate Commerce Commission, Docket No. 11703, entitled, "In the Matter of Intrastate Rates in Illinois" (59 ICC 350) and Docket No. 26550, entitled, "Passenger Fares and Surcharges" (214 ICC 174), be modified so as to authorize the rates proposed.

10. The petition thus seeks to procure an investigation by Interstate Commerce Commission under Section 13 of the Interstate Commerce Act for the purpose of reviewing and setting aside the order of the Illinois Commerce Commission (entered only 3 months before) denying the Milwaukee Road authority to increase its fares. The jurisdiction of the Illinois Commerce Commission over intrastate suburban fares is admitted, but it is alleged that that jurisdiction was exercised so as unfairly to burden interstate commerce.

[fol. 12] 11. Plaintiff, Milwaukee Road Commuters' Association, filed a motion for leave to intervene in opposition to the petition of the Milwaukee Road, and that motion was granted.

12. Extensive hearings were held by Burton Fuller, Examiner of Interstate Commerce Commission. A certified copy of the record of the proceedings at those hearings will be brought into this Court and tendered with this complaint for consideration by the Court in passing thereon.

13. At the conclusion of the evidence, the Examiner rendered his report. Exceptions of plaintiffs, Illinois Commerce Commission and Milwaukee Road Commuters' Association, were presented and overruled, and on November 21, 1955, the Interstate Commerce Commission filed a report and order (attached hereto as Exhibit B, and incorporated herein) substantially in accord with the report of Examiner Fuller. Said report and order, dated November 21, 1955, were served on the plaintiffs on December 12, 1955.

14. Plaintiff, Milwaukee Road Commuters' Association, filed a petition for reconsideration of said report and order (copy of which petition is attached hereto as Ex-
[fol. 13] hibit C, and incorporated herein) and plaintiff, Illinois Commerce Commission, filed a petition for reconsideration and rehearing on said report and order (copy of which petition is attached hereto as Exhibit D, and incorporated herein). Said petitions for reconsideration and rehearing were overruled by order of Interstate Commerce Commission dated March 2, 1956, served on plaintiffs on

March 12, 1956 (copy of which order is hereto attached as Exhibit E, and incorporated herein).

15. Petitions for reconsideration and rehearing of said order dated March 2, 1956 were filed by plaintiffs, Illinois Commerce Commission and Milwaukee Road Commuters' Association, with the Interstate Commerce Commission, embodying in substance, the objections set forth in like petitions (Exhibits C and D attached) filed with respect to the report and order dated November 21, 1955. The petitions for reconsideration and rehearing directed to the order dated March 2, 1956 have not been passed upon and are still pending before the Interstate Commerce Commission.

16. The report of the Interstate Commerce Commission dated November 21, 1955 (Exhibit B, attached) which was [fol. 14] approved and implemented by order of said Commission dated March 2, 1955 (Exhibit E, attached) after reviewing the evidence, found:

> "(1) That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.
>
> (2) That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13(4) of the Interstate Commerce Act.
>
> (3) That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.
>
> (4) That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment,

and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

(5) That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future.

(6) That the outstanding orders in Nos. 26550 and 11703 should be modified accordingly.

[fol. 15] An appropriate order affecting the interstate fares will be entered, including appropriate modifications of the outstanding orders in the proceedings referred to. No affirmative order affecting the intrastate fares will be entered at this time; the respondent and the Illinois Commission are given a period of 60 days in which to adjust the intrastate fares on the bases prescribed herein, failing which consideration will be given to the entry of an affirmative intrastate order."

Attached to the report dated November 21, 1955 (Exhibit B) is an appendix setting forth: (1) the present fares; (2) the fares proposed by the Milwaukee Road; and (3) the fares prescribed by the Interstate Commerce Commission. The fares so prescribed, while somewhat lower on the average than those proposed by the Milwaukee Road, call for an increase of approximately 28%, on the average, over the present fares of the Milwaukee Road, as approved and authorized by the Illinois Commerce Commission.

17. Although more than 60 days elapsed after entry by the Interstate Commerce Commission of the report and order of November 21, 1955 (Exhibit B), the Illinois Commerce Commission failed to adjust the intrastate fares of the Milwaukee Road so that they conformed to the bases prescribed in that report and as directed in the order based thereon. The Interstate Commerce Commission, [fol. 16] thereupon, by its order dated March 2, 1956, (Exhibit E) after overruling the petitions for reconsideration and rehearing (Exhibits C and D), directed that the intrastate fares prescribed by the report of the Interstate

Commerce Commission, dated November 21, 1954 (Exhibit B) be established on April 20, 1956, by 5 days' notice without concurrence of the Illinois Commerce Commission (See Exhibit E, attached).

VI.

The Order of The Illinois Commerce Commission—Its Basis and Effect

18. The Illinois Commerce Commission has primary jurisdiction over intrastate passenger fares. Recognizing that jurisdiction, the Milwaukee Road, on July 24, 1952, filed an application with the Illinois Commerce Commission asking that that Commission grant authority to the Milwaukee Road: (a) to discontinue all off-peak suburban trains; and (b) to increase suburban fares on the remaining trains by 33⅓%, or in the alternative, if the discontinuance of off-peak trains should not be allowed, to increase suburban fares by 73⅓%. The ground stated in the application on which the right to an increase in fares was predi- [fol. 17] cated, was that the suburban service was operated at an out-of-pocket loss and that suburban fares should be increased so as to eliminate that loss, so far as practicable.

19. After extensive hearings, the Illinois Commerce Commission entered an order on November 10, 1954 denying the application of the Milwaukee Road, both as to discontinuance of service and as to increase in rates. A copy of that order (omitting the exhibits thereto showing certain train schedules referred to therein) is attached as Exhibit F, and incorporated herein. The Milwaukee Road took no appeal from that order, and it remains as a final adjudication of the issues presented to the Illinois Commerce Commission in that proceeding.

20. The case was presented by the Milwaukee Road to the Illinois Commerce Commission on the statement in the application, and by its officers on the record, that only out-of-pocket revenues and expenses were to be considered in determining whether existing suburban fares should be increased—and that in determining the amount of out-of-

pocket expense, depreciation and certain maintenance-of-way expense, relating to right-of-way used for both through and suburban services, should not be included.

21. In the case before the Interstate Commerce Com-[fol. 18] mission, the Milwaukee Road included in out-of-pocket expense the depreciation charges, and a proportionate part of the maintenance-of-way expense above referred to, which (at the instance of the Milwaukee Road) had not been included as out-of-pocket expense in the case before the Illinois Commerce Commission. The Interstate Commerce Commission (Exhibit B, Sheet 5) approved the inclusion of both of those items in the out-of-pocket expense to be taken into account in computing the cash income or deficit. The Commission, in its order (Exhibit B, Sheet 7), prescribed fares sufficient: (1) to make up the cash deficit thus computed; and (2) in addition, to produce an excess that would serve as a contribution to the overhead expense of operating the railroad (although no like contribution was exacted from interstate or other passenger service).

22. The order of the Interstate Commerce Commission recognizes that the order of the Illinois Commerce Commission (Exhibit F) was correct on the case presented to that Commission by the Milwaukee Road. This appears from the following recitals in the report of the Interstate Commerce Commission (Exhibit B, Sheets 3-4):

> "By order dated November 10, 1954, after extensive hearings, the Illinois Commission found, based on [fol. 19] respondent's own showing, modified to reflect the change in its suburban operations from steam to diesel during the pendency of the proceeding, with certain adjustments with respect to the Union Station and credits for nonrevenue passengers, that respondent's suburban service was already being operated without an out-of-pocket loss and therefore denied its request in toto. Thereupon, respondent filed the petition with us as a result of which the instant proceeding was instituted."

The report of the Interstate Commerce Commission thus admits that, on the application and evidence presented by

the Milwaukee Road to the Illinois Commerce Commission, the Illinois Commission's order was sound and its jurisdiction was properly exercised.

22½. As to the failure of the Milwaukee Road, in the proceeding before the Illinois Commerce Commission, to include in out-of-pocket expenses the depreciation and maintenance-of-way items above referred to, the report of the Interstate Commerce Commission says (Exhibit B, Sheet 5):

> "Respondent's explanation for the prior omission was its impression that even without them [i.e., without the depreciation and maintenance-of-way items in question] it had shown a considerable deficit from this service. This explains but does not excuse its incomplete showing before the Illinois Commission."

[fol. 20] 23. The order of the Illinois Commerce Commission (Exhibit F) was thus in accord with the theory upon which the case was presented by the Milwaukee Road, and was supported by the evidence. It was a proper exercise by Illinois Commerce Commission of its jurisdiction over intrastate fares. The order must, therefore, stand. The Interstate Commerce Commission has no authority or jurisdiction, on petition of the Milwaukee Road, to interpose and nullify an order of the Illinois Commerce Commission (entered on petition of the Milwaukee Road to that Commission) on the ground that, if the Milwaukee Road had elected to present its case to the Illinois Commerce [fol. 21] Commission on a different theory, and had presented different evidence, the order would, or should, have been different. The Illinois Commerce Commission has primary jurisdiction over intrastate fares. If new, or different, facts are to be presented and a new adjudication is desired, based on those facts, the application for such adjudication should be made first, to the Illinois Commerce Commission, and that Commission should be given an opportunity to pass on the case now presented—and to investigate service conditions affecting expenses and rates—before application is made to the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act.

VII.

The Failure of the Evidence to Show That Existing Fares Would Result In A Cash Deficit

24. The necessity and advisability of presenting the case to the Illinois Commerce Commission is shown by the facts relating to suburban operation, here under consideration, and by the improvement in operating facilities which resulted from the proceedings before the Illinois Commerce Commission.

[fol. 22] 25. At the time that the case was presented to the Illinois Commerce Commission, in 1952 and 1953, the suburban trains of the Milwaukee Road were operated wholly by steam locomotives. From evidence introduced by the protestants in that case, it was shown that diesel operation of suburban trains would result in a saving of approximately $1,000,000 per year (Ill. C.C. Order, Exhibit F, p. 14). From that evidence, the Illinois Commerce Commission found (Exhibit F, pp. 13-14, Findings 3, 4):

> "3. That the petition filed July 24, 1952, as amended, by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, requests an increase in fares sufficient, after authorizing abandonment of service, to cover the out-of-pocket costs of rendering the service; that the data submitted by Petitioner in support of its claimed out-of-pocket loss was based on steam operation; that the evidence discloses that conversion to Diesel operation would reduce Petitioner's operating costs approximately $1,000,000 per year and that since the close of this record Petitioner has dieselized the suburban service;
>
> 4. That after dieselizing the suburban service, making proper allowances for reduction in costs for transportation of company employees and allocating Union Station costs on a true out-of-pocket basis, it appears that revenues will exceed expenses by substantial amounts; * * *"

[fol. 23] 26. After all the evidence had been introduced in the case before the Illinois Commerce Commission, and

while the Commission had the case under advisement, the Milwaukee Road began to install diesel locomotives in its suburban service. Dieselization of that service was completed on or about September 15, 1954. The latest (and the only) figures in the record before the Interstate Commerce Commission, relating to the period of diesel operation of suburban service, are those for the last 4 months of 1954. They show a saving in operating costs from diesel operation that approximates the $1,000,000 a year estimated by the Illinois Commerce Commission.

27. The Milwaukee Road claimed, at the hearing before the Interstate Commerce Commission, that for the year 1954, after adjustment for diesel operation, it had suffered an out-of-pocket loss of $724,500 (Exhibit B, Sheet 5). The evidence shows there is no basis for that claim. The Commission found that, after charging to suburban out-of-pocket expense, depreciation, and a proportionate part of the maintenance-of-way expenses for right-of-way used by both through and suburban trains, the cash deficit was [fol. 24] $306,038 (Exhibit B, Sheet 7). If we exclude depreciation and said maintenance-of-way items applicable to both through and suburban service (as they were excluded by the Milwaukee Road in presenting the case to the Illinois Commerce Commission), there is little, or no, cash deficit in the 1954 operation. The following tabulation shows out-of-pocket revenues and expenses for 1954, adjusted as noted for diesel operation, first, as found by the Interstate Commerce Commission, and then as further adjusted to eliminate depreciation and other items not claimed as out-of-pocket expenses in the case before the Illinois Commerce Commission:

[fol. 25] OUT-OF-POCKET
OPERATING STATEMENT FOR 1954

As Found By Interstate Commerce Commission		
Revenue (Actual for year)		$1,799,140
Expenses (on basis of last 4 months, except actual for year for maintenance of way	$2,269,404	
Less credit for non-revenue passengers	164,226	2,105,178
Out-of-pocket Deficit as found by Commission (Exhibit B, Sh. 9)		($ 306,038)
As Adjusted to the Basis Presented to Illinois Commerce Commission		
Revenue (Actual for year)		$1,799,140
Expenses	$2,105,178	
Adjustments—expenses included by Interstate Com. Com., not claimed by Milwaukee Road in Ill. Com. Com. Case:		
Depreciation	$188,764	
Maintenance of Way	71,703	
Total adjustment	258,172	
Expenses as adjusted to basis presented to Ill. Com. Com.		1,847,006
Deficit for 1954 adjusted to basis presented to Ill. Com. Com.		($ 47,866)

[fol. 26] 28. The adjusted deficit for 1954 of $47,866 is the figure found by the Interstate Commerce Commission with only the adjustment made for the expenses claimed in

the case before the Interstate Commerce Commission which were not claimed in the case before the Illinois Commerce Commission. If the figures are adjusted further for the increase in revenues shown in the last four months of 1954, the annual deficit is $21,056. Plaintiffs allege on information and belief that further adjustment of expenses to allow for the partial use of steam engines and nonsuburban diesels during the base period would eliminate that small deficit.

29. It follows that the evidence supports the order of the Illinois Commerce Commission (Exhibit F) finding that continuance of existing suburban intrastate fares would not result in a cash deficit (computed on the formula presented to that Commission and used in other rate cases) provided that the suburban service is dieselized, as suggested in the record before the Illinois Commerce Commission.

VIII.

Absence of Evidence to Show Discrimination Against Interstate Commerce

30. The jurisdiction of the Interstate Commerce Com- [fol. 27] mission to fix intrastate rates of fare for the Milwaukee Road is predicated on the conclusion in the Commission's report (Exhibit B, Sheet 9) that the present intrastate rates of fare (those established by the Illinois Commerce Commission) result "in undue, unreasonable and unjust discrimination against interstate commerce." There is no evidence to support that conclusion.

31. The report finds that, after adjusting for diesel operation, the Chicago suburban service of the Milwaukee Road was operated at an out-of-pocket deficit in 1954 of $306,038 (Exhibit B, Sheet 7)—a questionable figure according to the theory of accounting heretofore followed in rate cases (see Paragraphs 28-29, above). The report then finds (Exhibit B, Sh. 7) that the increase in fares prescribed in the report would be sufficient to eliminate the assumed $306,000 cash deficit and to leave $77,000 to apply against "indirect costs."

32. The effect of the prescribed increase in suburban intrastate fares would be to cause the intrastate suburban passenger service to contribute to the deficit in interstate and other passenger service of the Milwaukee Road, and [fol. 28] would discriminate unfairly against the intrastate service.

33. There is no evidence as to the nonsuburban interstate fares of the Milwaukee Road except for a tabulation read into the record that sets forth the fares between Chicago and various cities in Wisconsin and Minnesota. The interstate fares thus shown are at a rate that is less than the existing rates of fare in the intrastate suburban passenger service of the Milwaukee Road. The increase in the intrastate suburban fares, prescribed by the Interstate Commerce Commission (Exhibit B) would result in intrastate rates of fare from 20% to 25% higher than the rates charged for interstate passenger service.

34. The report of the Interstate Commerce Commission recites that there is a large deficit in the passenger operation of the Milwaukee Road (resulting almost entirely from interstate passenger service). As to this, the report states (Exhibit B, Sheet

> "In 1954, in terms of net railway operating income, respondent earned from its freight operations $37,393,050, and suffered a deficit from its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to [fol. 29] respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden on respondent's freight operations, state and interstate."

35. The last-quoted statement does not set forth a fair basis for increasing suburban passenger rates. If the rule stated were followed, suburban rates would be increased to the full extent that traffic would bear, irrespective of whether or not the amount charged is a fair and reasonable price for the service rendered, and irrespective of whether or not the rates fixed discriminate against intrastate service.

36. The question, as prescribed by statute, is as to whether the present rates of fare result in unfair, unreasonable and unjust discrimination against passengers or localities in interstate commerce, or against interstate commerce generally. To determine that question, rates and services in intrastate commerce must be compared with like rates and services in interstate commerce. The record in this case furnishes no basis for such a comparison—certainly none which would support an inference that existing intrastate rates of fare discriminate against interstate commerce.

[fol. 30]

IX.

Absence of Evidence to Show That Intrastate Fares Prescribed by The Interstate Commerce Commission Are Fair And Reasonable

37. The report of the Interstate Commerce Commission finds (Exhibit B, Sheet 12) that the increased suburban fares therein prescribed are "just and reasonable." The record does not support that finding.

38. The only colorable basis for the finding as to reasonableness is the statement in the report (Exhibit B, Sheet 7, Line 36) that there is a "strong similarity" between the suburban territory served by the Milwaukee Road and that served by the Chicago and North Western Railway (herein called "the North Western"), and hence that the rates of fare prescribed for suburban service on the Milwaukee Road must be assumed to be reasonable, because they are about the same as those approved for the North Western.

39. The evidence does not support the last conclusion. It is not shown that there is similarity between the suburban operation of the Milwaukee Road and that of the North Western. On the contrary, the evidence shows that the present suburban rates of fare on the North Western are based on an operation that employed 72 steam loco-
[fol. 31] motives and 3 diesel locomotives as against a complete diesel operation on the Milwaukee Road.

40. There is no similarity between a steam and a diesel operation. The cost of operating the suburban service of

the Milwaukee Road and diesel locomotives is less by approximately $900,000 per year than the cost of operation by steam locomotives. Furthermore, when the order authorizing present rates of fare on the North Western was entered, it specified (288 ICC 15):

> "The above analysis [on which the Commission's order was based] relates to an existing suburban operation for the year 1951 and obviously does not contemplate the cost of some other suburban operation such as might be encountered with diesel engines, gallery-type cars and Budd cars."

41. The Interstate Commerce Commission has also stated (279 ICC 773-8) that in fixing suburban fares on the North Western between Chicago and the suburbs to the north, it took into consideration the fact that the North Western (unlike the Milwaukee Road) carries no freight, so that its entire cost must be borne by passenger traffic.

[fol. 32] 42. There is thus no ground for finding a similarity between the suburban operation of the Milwaukee Road and that of the North Western. Hence, there is no justification for the use by the Interstate Commerce Commission of the North Western fares as a basis for fixing the fares of the Milwaukee Road. The only evidence as to rates of fare prescribed for other suburban diesel operations in the Chicago area relates to the suburban fares of the Burlington Railroad and the Rock Island Railroad. The evidence showed that the rates of fare charged for suburban service on those railroads were less than existing corresponding rates of the Milwaukee Road, and much less than those prescribed by the report and orders of the Interstate Commerce Commission (Exhibits B and E) here sought to be set aside.

43. The evidence thus does not support the finding that intrastate suburban fares prescribed for the Milwaukee Road suburban service by the report and orders of the Interstate Commerce Commission (Exhibits B and E) are just and reasonable.

[fol. 33]

X.

Plaintiffs' Right to the Relief Prayed

44. From the foregoing, the following appears:

(a) There is no evidence on which to base a finding that the intrastate suburban fares of the Milwaukee Road have been unreasonably or unfairly imposed or restricted by the Illinois Commerce Commission. The Interstate Commerce Commission had no authority or jurisdiction to interpose and to increase those fares on petition of the Milwaukee Road or otherwise.

(b) There is no evidence on which to base a finding that the existing fares in the intrastate suburban service of the Milwaukee Road are unfair, or unreasonable, or result in unjust discrimination against interstate commerce.

(c) There is no evidence on which to base a finding that the intrastate suburban fares of the Milwaukee Road prescribed by the report and orders of the Interstate Commerce Commission (Exhibits B and E) are fair and reasonable.

[fol. 34] It follows that the report and orders of the Interstate Commerce Commission (Exhibits B and E) should be set aside and their enforcement enjoined.

45. Plaintiffs bring this suit as representatives of the public, and particularly of the passengers who ride the suburban trains of the Milwaukee Road between Chicago and the northern boundary of Illinois on the North Line, and between Chicago and Elgin on the West Line. Unless the relief herein prayed is granted, and unless enforcement of the orders of the Interstate Commerce Commission prescribing increased fares for the Milwaukee suburban service is enjoined: (a) temporarily until the disposition of this suit; and (b) permanently thereafter; the passengers using the suburban service of the Milwaukee Road will be required to pay fares averaging 28% more in amount than present fares, and will suffer irreparable injury.

XI.

Prayer for Relief

46. Plaintiffs therefore ask:

(a) That process issue against the defendants, United States of America, Interstate Commerce Com-
[fol. 35] mission, and the Milwaukee Road, in the manner provided by statute;

(b) That upon the filing of the complaint:

(i) The Judge of this Court to whom the complaint is presented, shall notify the Chief Judge of this circuit of the filing of the complaint;

(ii) The Chief Judge thereupon shall designate three judges, at least one of whom shall be a circuit judge, to hear and decide this suit;

(c) That this Court, or the Judge to whom this complaint is presented, shall issue a temporary restraining order:

(i) Enjoining the Interstate Commerce Commission from enforcing its said report and orders dated November 24, 1955 and March 2, 1956, in its Docket No. 31742 (Exhibits B and E, attached); and

(ii) Enjoining the Milwaukee Road from putting into effect the fares prescribed in said report and orders;

until the application for a temporary injunction, herein made, shall have been heard and determined;

(d) That this Court shall issue a temporary injunction effective until further order of Court:

(i) Enjoining the Interstate Commerce Commis-
[fol. 36] sion from enforcing said report and orders (Exhibits B and E, attached);

(ii) Enjoining the Milwaukee Road from putting into effect the fares prescribed in said report and orders of the Interstate Commerce Commission;

(iii) Enjoining the Milwaukee Road from putting into effect any fares in its Illinois intrastate suburban service other than those now in effect;

(e) That upon final hearing, this Court shall enter a decree:

(i) Finding and adjudging that said report and orders of the Interstate Commerce Commission (Exhibits B and E, attached) are beyond the jurisdiction and are an abuse of authority of the Interstate Commerce Commission;

(ii) Finding and adjudging that said report and orders are not supported by the evidence before the Interstate Commerce Commission in the proceeding, Commission's Docket No. 31742, in which they were entered;

(iii) Finding and adjudging that said report and orders of the Interstate Commerce Commission are void, and setting aside said report and orders;

(iv) Permanently enjoining the Interstate Commerce Commission from enforcing said report and orders, and permanently enjoining the Milwaukee Road from putting into effect the fares prescribed therein;

(f) That this Court enter orders granting the tem-
[fol. 37] porary restraining order and preliminary injunction herein requested without requiring plaintiffs to furnish bond or other security.

(g) That plaintiffs be granted a reasonable period in which to present to this Court the certified transcript of the evidence and proceedings before the Interstate Commerce Commission in its Docket No. 31742.

State of Illinois and Illinois Commerce Commission, Plaintiffs, by /s/ Latham Castle, Attorney General, /s/ Harry R. Begley, Special Assistant Attorney General, 160 North LaSalle Street, Chicago, Illinois.

Milwaukee Road Commuters' Association, Plaintiff, by Tenney, Sherman, Bentley & Guthrie, /s/ S. Ashley Guthrie, Its Attorneys, 120 South LaSalle Street, Chicago 3, Illinois.

[fol. 38] VERIFICATION (omitted in printing).

[fol. 40] EXHIBIT A. TO COMPLAINT

Before The

INTERSTATE COMMERCE COMMISSION

Docket No. 31742

PETITION FOR INVESTIGATION UNDER SECTION 13 OF ILLINOIS INTRASTATE FARES BETWEEN POINTS ON CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY AND FOR PERMISSION TO INCREASE INTERSTATE FARES BETWEEN ILLINOIS AND WISCONSIN POINTS ON SAID RAILROAD, WITHIN THE CHICAGO SUBURBAN AREA.

---

1. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called "Petitioner," is a corporation duly organized under the laws of the State of Wisconsin. It operates a railroad through the States of Illinois, Wisconsin, and other states, as a common carrier of passengers and property in interstate commerce, and is subject to the jurisdiction of the Interstate Commerce Commission.

2. As a part of its operations Petitioner is also a common carrier of passengers in interstate and intrastate commerce within the Chicago suburban area. This area, insofar as Petitioner's operations are concerned, includes Walworth, Wisconsin and Elgin, Illinois on the one hand, and Chicago Union Station, Chicago, Illinois on the other, and all intermediate points.

3. The Illinois Commerce Commission is a body created by statute and is vested with jurisdiction over common carriers by railroad within the State of Illinois, including jurisdiction over intrastate passenger fares.

4. Faced with heavy losses in its passenger operations within the Chicago suburban area, Petitioner on July 24, 1952, filed with the Illinois Commerce Commission its petition, and on August 7, 1952 an amended petition, seeking [fol. 41] authority to increase its one way, round-trip, multiple, and commutation fares between points in Illinois with-

in said area. The fare increase request was coupled with a request for leave to discontinue certain suburban trains. Petitioner sought fares which, in conjunction with savings from such of the requested train discontinuances as the Illinois Commerce Commission might authorize, would place Petitioner's suburban operations on a self-supporting basis.

5. Hearings upon said petition commenced on October 27, 1952, and were recessed from time to time, the final hearing having been held on July 15, 1953. The Illinois Commerce Commission thereupon directed the filing of written briefs and the submission of the case on oral argument, which latter was held, and the case finally submitted on October 28, 1953. Over a year from the final submission of the case, and more than two years from the filing of said petition elapsed before the Illinois Commerce Commission on November 10, 1954 issued its order flatly denying any authority to Petitioner to increase any of its fares or to discontinue any of its trains. As a result of said order of November 10, 1954, Petitioner has been denied any increase since an order of the Illinois Commerce Commission issued September 13, 1951 to compensate for increased operating costs over past years, although other suburban carriers have in the interim been granted fare increases in partial compensation, at least, for such increased costs.

6. Petitioner is, therefore, required by the State of Illinois to perform said transportation of passengers within the Chicago suburban area at rates which, even taking into consideration Petitioner's recent conversion to 100 per cent diesel operation in said area, result in out-of-pocket loss in excess of $700,000.00 per year, and fully distributed loss in excess of $1,600,000.00, causing disadvantage to and undue, unreasonable, and unjust discrimination against interstate commerce and shippers in interstate commerce, in violation of Sections 3(1) and 13(4) of the Interstate Commerce Act.

7. Petitioner now proposes increases in its fares, which, [fol. 42] although insufficient to eliminate either of the above described losses, or the above described disadvantage and

discrimination, will nevertheless reduce same. Said proposed increases are as follows:

One way fares to be increased from approximately 2.5¢ per mile to approximately 3.2¢ per mile, minimum fare 25¢. In computing distances and fares, fractions less than 0.5 to be dropped, and 0.5 or over to be increased to next full mile or cent.

Round trip fares to be increased from 180% of existing one way fares to 180% of proposed one way fares, adding when necessary to make the resulting fare end in "5" or "5".

Multiple fares: 10-ride to be increased from five times present round trip fares to five times proposed round trip fares.

25-ride to be increased from 11½ times present round trip fares to 12½ times proposed round trip fares, adding when necessary to make the resulting fare end in "0" or "5".

Commutation Fares: Unrestricted monthly, 46-ride monthly, and 12-ride weekly to be increased 40%, with maximum increases of $6.40, $5.75, and $1.60 respectively, adding when necessary to make the resulting fare end in "0" or "5".

The increases herein proposed will result in fares which will not exceed a just and reasonable level.

8. Petitioner's present one way and round trip intrastate fares between points in Illinois, and its one way and round trip interstate fares are published in accordance with continuing orders of the Interstate Commerce Commission in Docket 11703, *In the Matter of Intrastate Rates in Illinois*, 59 ICC 350, and in Docket 26550, *Passenger Fares and Surcharges*, 214 ICC 174, as modified by subsequent orders in Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 ICC 545; Docket 29862, [fol. 43] *Increased Passenger Fares, Western Railroads*, 269 ICC 281; and Docket 29897, *Increased Coach Fares on Western Railroads*, 269 ICC 632.

WHEREFORE, Petitioner prays that this Commission pursuant to the provisions of Section 13 of the Interstate Com-

merce Act, institute an investigation in respect to the matters and things herein set forth; that, after due notice to the State of Illinois and the authorities thereof, a hearing be held; that this Commission find that the aforesaid intrastate coach fares within the Chicago suburban area made or imposed by the authority of the State of Illinois cause, and will continue to cause disadvantage to and undue, unreasonable, and unjust discrimination against interstate commerce, and shippers in interstate commerce, in violation of the provisions of paragraph 1 of Section 3, and paragraph 4 of Section 13 of the Interstate Commerce Act.

Petitioner further prays that this Commission by order direct the Petitioner to increase its aforesaid intrastate fares as herein proposed or to such higher level as will remove the aforesaid disadvantage to and discrimination against interstate commerce, and shippers in interstate commerce, and that Petitioner be permitted to make like increases in its interstate coach fares in said Chicago suburban area.

Petitioner further prays that it be ordered to increase its Illinois intrastate first class one way and round trip minimum fares, and that it be permitted to increase its interstate first class one way and round trip minimum fares to the same level as the Commission may direct and authorize herein for coach fares.

Petitioner further prays that the Commission modify its orders in Docket 11703, *In the Matter of Intrastate Rates in Illinois*, and Docket 26550, *Passenger Fares and Surcharges*, as subsequently modified, to permit the establishment and maintenance of intrastate and interstate fares within the Chicago suburban area as may herein be authorized, and that such further order or orders may be made as the Commission might consider proper in the premises.

Respectfully submitted,

888 Union Station Bldg.
516 W. Jackson Blvd.
Chicago 6, Illinois
February 1, 1955

W. J. Quinn
Thos. H. Maguire
R. K. Merrill
Attorneys for Petitioner

[fol. 45]. EXHIBIT B TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

Dated November 21, 1955, Served Dec. 12, 1955.

No. 31742[1]

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD

Decided November 21, 1955.

Respondent's intrastate fares within its Chicago, Ill., suburban area found to result in revenue discrimination against interstate commerce. Just, reasonable, and nondiscriminatory interstate and intrastate fares within said area prescribed. Outstanding orders in Nos. 26550 and 11703 modified accordingly.

R. K. Merrill for respondent.

H. R. Begley and *William J. Gibbons* for Illinois Commerce Commission.

E. B. Wilkinson, J. E. Hart, and *Floyd L. Thomas* for interveners.

S. Ashley Guthrie and *Francis D. Fisher* for protestant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by the Illinois Commerce Commission and by the protestant to the report proposed by the examiner, and the respondent replied thereto. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

This is an investigation, instituted upon petition of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, to determine whether its intrastate fares within its

[1] This report embraces also, on further hearing, No. 26550, *Passenger Fares and Surcharges*, 214 I.C.C. 174, and No. 11703, *Intrastate Rates Within Illinois*, 59 I.C.C. 350.

Chicago, Ill., suburban area, embracing points between and including Walworth, Wis., and Elgin, Ill., on the one hand, and Chicago Union Station, on the other, made or imposed [fol. 46] by the Illinois Commerce Commission, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce, and to determine what fares, if any, or what maximum or minimum fares, should be prescribed to remove any unlawfulness that may be found to exist. The investigation also includes the question of whether the outstanding orders in No. 26550, *Passenger Fares and Surcharges*, 214 I.C.C. 174, prescribing the maximum interstate one-way and round-trip fares in the above area, and in No. 11703, *Intrastate Rates Within Illinois*, 59 I.C.C. 339, prescribing the minimum intrastate one-way and round-trip fares in said area, as subsequently modified, including the modifications made in connection with *Increased Passenger Fares, Western Railroads*, 269 I.C.C. 281, and *Increased Coach Fares on Western Railroads*, 269 I.C.C. 632, should be further modified so as to permit the establishment and maintenance of the increased interstate and intrastate one-way and round-trip fares hereinafter described.

The Northern Indiana Coal Traffic Association, Wisconsin Paper and Pulp Manufacturers Traffic Association, and Wisconsin Canners Association, organizations of shippers and receivers of freight in interstate and intrastate commerce over the lines of the respondent and other railroads, adduced evidence in its behalf. The Milwaukee Road Commuters Association, an association of commuters in its Chicago suburban area, hereinafter called protestant, adduced evidence in opposition.

Respondent's present interstate and intrastate coach fares as prescribed in the proceedings above cited between points in this area are made 2.5 cents per mile, minimum 15 cents, with round-trip fares made 180 percent of the one-way fares. Its present 10-trip fares are made 5 times the round-trip fares, 25-trip fares 11.5 times the round-trip fares, and commutation fares on the basis of the so-called

old North Western basis, as approved for intrastate application in Illinois Commerce Commission Docket No. 38977, decided September 18, 1951, heard jointly with our No. 30765, *Illinois Intrastate Multiple Ride and Commutation Fares*, the latter proceeding having been discontinued on respondent's request, upon its establishment of interstate multiple-ride and commutation fares in this area on the same basis as had been approved by the Illinois Commission [fol. 47] for intrastate application. The old North Western basis had been approved by this and the Illinois Commission for interstate and intrastate application between points in the Chicago suburban area of the Chicago and North Western Railway Company, called the North Western, in *Commutation Fares Between Chicago and Wisconsin*, 279 I.C.C. 773 (1950), and related State proceeding. In 1953, that basis was increased an average of about 20 percent, upon application of the North Western, in *Commutation and Multiple Fares, Illinois and Wisconsin*, 288 I.C.C. 15, and related Illinois proceeding.

Effective July 25, 1955, with the approval of this and the Illinois Commission, the North Western increased the minimum fare within its suburban area in connection with all types of tickets to 25 cents per trip. The two Commissions have cooperated in approving uniform fares for most of the other suburban lines serving the Chicago area. See *New York Central Commutation Fares, Chicago and Ind.*, 279 I.C.C. 188 (1950), *Mirimum Passenger Fares, Chicago N. S. & M. Ry. Co.*, 279 I.C.C. 628 (1950), *Chicago, S. S. & S. B. Fares*, 279 I.C.C. 663 (1950), *Increased Passenger Fares, Chicago, N. S. & M. Ry. Co.*, 284 I.C.C. 221 (1952), *Illinois Central Multiple Fares in Chicago Area*, 281 I.C.C. 537, 289 I.C.C. 133 (1953), *Fares, Chicago S.S. & S. B. R.*, 291 I.C.C. 665 (1954).

In 1952, however, the instant respondent, instead of filing petitions or schedules with both Commissions, so that like cooperative action could be taken, filed a petition with the Illinois Commission only, requesting—

> authority to discontinue all off-peak Chicago suburban passenger trains and consolidate certain peak-hour trains and also to increase one-way, round-trip and commutation fares to such extent as will after taking into

consideration the economy effected by such discontinuances and consolidation of trains, give respondent sufficient revenues to permit operation of the Chicago suburban service without an out-of-pocket loss.

By order dated November 10, 1954, after extensive hearings, the Illinois Commission found, based on respondent's own showing, modified to reflect the change in its suburban operations from steam to diesel during the pendency of the [fol. 48] proceeding, with certain adjustments with respect to the Union Station and credits for nonrevenue passengers, that respondent's suburban service was already being operated without an out-of-pocket loss and therefore denied its request in toto. Thereupon, respondent filed the petition with us as a result of which the instant proceeding was instituted.

Respondent now seeks a modification of the outstanding orders in Nos. 26550 and 11703, and a new section-13 order authorizing it to increase its interstate and intrastate fares within the Chicago suburban area as follows:

One-way fares to be increased from 2.5 cents per mile, minimum 15 cents, to 3.2 cents per mile, minimum 25 cents, and round-trip fares to be increased from 180 percent of the present one-way fares to 180 percent of the proposed one-way fares, resulting in an average increase of 26.9 percent, or about $113,312 annually; 10-ride fares to be increased from 5 times the present round-trip fares to 5 times the proposed round-trip fares, reflecting an average increase of 27 percent, or about $27,525 annually; 25-ride fares to be increased from 11.5 times the present round-trip fares to 12.5 times the proposed round-trip fares, reflecting an average increase of 36.1 percent, or about $118,336 annually; and commutation fares to be increased 40 percent, subject to maxima of $1.60, $5.75, and $6.40, in connection with the weekly, 46-ride monthly, and unrestricted monthly commutation fares, respectively, resulting in an average increase of 27.4 percent, or about $258,913 annually.

The average increase in all fares in the suburban area would be 28.8 percent, or a total of about $518,086 annually, the annual-increase estimate being based on the 1954 volume. The one-way, round-trip, and 10-trip fares apply, and would continue to apply, between all points in the suburban area,

while the 25-trip and commutation fares apply, and would continue to apply, between the Union Station, on the one hand, and other points in the suburban area, on the other. The only interstate fares in issue are those to and from Walworth and Zenda, Wis., which are the only points in the suburban area located outside of the State of Illinois. The present, proposed and prescribed fares are set forth in table I of the appendix to this report.

Respondent and protestant presented comprehensive studies, based on the year 1954, of the cost of the service, which are summarized in table II of the appendix. Both [fol. 49] studies have been adjusted to reflect the complete conversion of the suburban operations from steam to diesel which took place on September 1, 1954. It will be noted that on an out-of-pocket basis respondent shows a deficit of $724,511, while protestant shows an income of $9,701. For expenses other than the Union Station, protestant's lower figures are accounted for by the elimination of any allowance for depreciation and of certain accounts for maintenance of way not included in respondent's study before the Illinois Commission.

Respondent operates 18 diesels in this suburban service, acquired at various dates from 1946 to 1954, at an original cost of $4,166,572, with accrued depreciation of $932,041, and an annual depreciation charge of $155,162, at the approved rate of 4.9 percent. It operates 131 coaches in this service, acquired at various dates from 1900 to 1929, at an original cost of $2,627,153, with accrued depreciation of $2,334,404, and an annual depreciation charge of $39,842, at approved rates of from 1.7 to 3.18 percent. Protestant apparently considers these and the other depreciation charges not to be out-of-pocket costs because they do not represent cash outlays, but they are proper direct charges to the service in which the equipment or other property is used, and hence are out-of-pocket costs just as much as cash outlays for wages or materials.

The same observation applies to the accounts under maintenance of way not included in respondent's showing before the Illinois Commission but included here. Respondent's explanation for the prior omission was its impression that even without them it had shown a considerable

deficit from this service. This explains but does not excuse its incomplete showing before the Illinois Commission.

On this record, we can accept respondent's figure of $2,270,161, reduced 3.2 percent[2], or to $2,197,516, as the out-of-pocket cost of the passenger-carrying portion of the suburban service, excluding nonpayroll taxes, return on investment, and Union Station expenses.

[fol. 50] This leads us to a discussion of the Union Station expenses. The Chicago Union Station Company is owned jointly by The Pennsylvania Railroad Company, The Chicago, Burlington and Quincy Railroad Company, called the Burlington, and the respondent, the former owning 50 percent and each of the others 25 percent. The railroads using the Union Station facilities are obligated under the terms of an agreement between the proprietary companies to pay the wheelage proportion of the operation of the station, the wheelage proportion being that portion which the number of each railroad's locomotives and cars using the station and facilities during each month bears to the total number of locomotives and cars of all the users, each locomotive to be counted as 2 cars and each suburban coach as 4/5 of a car. The Chicago and Alton Railroad Company (now the Gulf, Mobile and Ohio Railroad Company) was admitted to use of the Union Station by agreement of September 18, 1915. This contract, insofar as it is here applicable, requires the Gulf, Mobile & Ohio also to pay a wheelage proportion of the Union Station operating expenses, without, however, the benefit of the reduced car count on suburban cars.

Respondent's figure of $305,530 as the out-of-pocket cost of this service for the use of the Union Station is the so-called relievable cost; that is, the payment it would be relieved of under the contract if it did not have the suburban service. Protestant's figure of $44,325, on the other hand, is based on a study of respondent's portion of the expenses which would be saved if there was no suburban service at all into the station. This basis is the same as that originally presented by respondent before the Illinois Commission and approved in numerous prior proceedings, and we

[2] Or by $72,645, the out-of-pocket cost of the head-end service, computed on a car-foot-mile basis.

see no reason for not approving it here. However, here again, protestant has improperly deducted depreciation charges in the amount of $27,563, which if added to the figure of $44,325, results in a total of $71,888. We can accept this amount as the out-of-pocket cost of this service, not including nonpayroll taxes or return, for the use of the Union Station.

The remaining difference between the cost studies of respondent and protestant consists of the different adjustments made for nonrevenue passengers, specifically nonsuburban employees who travel to and from work under passes issued as a customary part of their compensation, respondent's figure being $17,928 and protestant's $173,265. Respondent's figure is based on its operating witness' esti- [fol. 51] mate that the nontransportation of these nonsuburban employees would only save the use of two cars in each direction on its west line and one car in each direction on its north line. Protestant's figure is based on its computation of the pro rata cost of transporting these nonsuburban employees based on data available of record. The ticket-selling and collection expense and liability for personal injuries is somewhat less in the case of pass than in the case of revenue passengers. Based on the method approved in the first report in *Illinois Central Multiple Fares in Chicago Area*, *supra*, at page 547, we find that the proper adjustment for this purpose is $164,226.

Summarizing, the total revenues from the passenger-carrying portion of the suburban service were $1,799,140, the out-of-pocket cost, not including nonpayroll taxes or return, was $2,269,404, and the credit for nonrevenue passengers $164,226, resulting in a total out-of-pocket deficit of $306,038.

If the fares were increased an average of 20 percent as in *Commutation and Multiple Fares, Illinois and Wisconsin*, *supra*, plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually.

Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of

the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the Commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as in the words of respondent's traffic witness there is "a strong similarity" between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois Commission, having formerly been on a parity.

Respondent shows that its suburban traffic has changed little in recent years and thus urges that the 1951 increase had no adverse effect on the movement of the traffic. It does not follow that the drastic increases now proposed, [fol. 52] particularly for distances over 9 miles, would have no such adverse effect. There is no adequate support for the proposed increase in the 25-ride fares from 11.5 to 12.5 times the round-trip fares. We found that a similar increase proposed by the North Western, by discouraging travel, would not result in a substantial increase in revenue, and a like finding is warranted here.

According to the respondent, in 1954 railway costs were 149 percent, living costs 92 percent, and the average hourly earnings in manufacturing industries were 172 percent higher than in 1940, as compared with the average increase made in its suburban fares in the same period of 69 percent, and 119 percent as proposed. However, compared with 1950, which was the basis of its cost study presented in No. 30765 and the related State proceeding, railway costs have increased 11.5 percent, living costs 4 percent, and hourly earnings 12.5 percent.

In 1954, in terms of net railway operating income, respondent earned from its freight operations $37,393,050, and suffered a deficit from its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it

increases respondent's passenger deficit and results in an undue burden upon its freight operations, state and interstate. This, of course, is the reason for the appearance of the freight shippers in this proceeding.

The one-way and round-trip fares here approved for respondent's suburban area, like those approved for the North Western and the Illinois Central, will be at a higher rate per mile than the corresponding fares to and from its non-suburban points. However, as we said of the North Western, this will be offset by the fact that respondent's multiple and commutation fares for the longer hauls in the suburban area will be at a lower rate per mile than any of its non-suburban fares. Counsel for the Illinois Commission acknowledges that "perhaps the allowance of a minimum fare of 25 cents per trip and one-way fares based on approximately a 3-cent mile could be established to allow respondent 'similarity' with the North Western."

[fol. 53] Protestant points out that the deficit from the respondent's total passenger operations is relatively greater than from its suburban operations, but as we said of a similar situation on the Illinois Central, the fact that respondent cannot make a profit or at least so far has been unable to make a profit on its other passenger-train service is no reason for depriving it of an opportunity to make a profit on its suburban operations if it can be done at lawful fares.

We find:

1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.

2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13(4) of the Interstate Commerce Act.

3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future.

6. That the outstanding orders in Nos. 26550 and 11703 should be modified accordingly.

An appropriate order affecting the interstate fares will be entered, including appropriate modifications of the out- [fol. 54] standing orders in the proceedings referred to. No affirmative order affecting the intrastate fares will be entered at this time; the respondent and the Illinois Commission are given a period of 60 days in which to adjust the intrastate fares on the bases prescribed herein, failing which consideration will be given to the entry of an affirmative intrastate order.

COMMISSIONER ARPAIA concurs in the result.

FREAS, *Commissioner*, concurring in part:

I cannot subscribe to that portion of this report which prescribes fares higher than those sought.

CHAIRMAN CROSS did not participate in the disposition of the proceeding.

[fol. 55] Docket No. 31742

APPENDIX

TABLE 1

Unrestricted Monthly Commutation Fares Present, Proposed, and Prescribed

Between Chicago (Union Sta.), Ill., and	Distance	FARES Present	Proposed	Prescribed
Western Division	*Miles*			
Hermosa, Ill.	6.1	$ 7.20	$10.10	$15.00
Cragin, Ill.	7.2	8.40	11.80	15.00
Hanson Park, Ill.	7.9	9.60	13.45	15.00
Galewood, Ill.	8.8	10.20	14.30	15.00
Mars, Ill.	9.3	10.20	14.30	15.00
Mont Clare, Ill.	9.7	10.80	15.15	15.00
Elmwood Park, Ill.	10.4	10.80	15.15	15.00
River Grove, Ill.	11.6	11.80	16.55	15.00
Franklin Park, Ill.	13.4	12.30	17.25	15.40
Mannheim, Ill.	14.2	12.80	17.95	16.20
Bensenville, Ill.	17.4	14.30	20.05	18.20
Woodale, Ill.	19.3	15.20	21.30	19.40
Itasca, Ill.	21.2	16.00	22.40	20.40
Medinah, Ill.	23.2	16.80	23.20	21.20
Roselle, Ill.	24.6	17.60	24.00	22.00
Ontarioville, Ill.	28.6	19.20	25.60	23.60
Bartlett, Ill.	30.3	19.60	26.00	24.00
Spaulding, Ill.	32.9	20.80	27.20	25.20
Elgin, Ill.	36.8	22.40	28.80	26.80
Northern Division				
Healy, Ill.	6.4	$ 7.20	$10.10	$15.00
Grayland, Ill.	8.2	9.60	13.45	15.00
Mayfair, Ill.	9.0	10.20	14.30	15.00
Forest Glen, Ill.	10.2	10.80	15.15	15.00
Edgebrook, Ill.	11.3	11.30	15.85	15.00
Morton Grove, Ill.	14.3	12.80	17.95	16.20
Golf, Ill.	16.2	13.80	19.35	17.60
Glenview, Ill.	17.4	14.30	20.05	18.20

APPENDIX

TABLE I

Unrestricted Monthly Commutation Fares Present, Proposed and Prescribed

Between Chicago (Union Sta.), Ill., and	Distance	FARES Present	Proposed	Prescribed
Northern Division (cont'd)	*Miles*			
Techny, Ill.	20.3	$15.60	$21.85	$20.00
Northbrook, Ill.	20.9	16.00	22.40	20.40
Deerfield, Ill.	23.9	17.20	23.60	21.60
West Lake Forest, Ill.	28.0	18.80	25.20	23.20
Rondout, Ill.	32.3	20.40	26.80	24.80
[fol. 56]				
Libertyville, Ill.	35.5	22.00	28.40	26.40
Grays Lake, Ill.	41.0	24.00	30.40	28.40
Round Lake, Ill.	44.0	25.20	31.60	29.60
Long Lake, Ill.	46.0	26.00	32.40	30.40
Wilson Road, Ill.	46.7	26.40	32.80	30.80
Ingleside, Ill.	47.8	26.80	33.20	31.20
Fox Lake, Ill.	49.5	27.60	34.00	32.00
Spring Grove, Ill.	53.7	29.20	35.60	33.60
Solon Mills, Ill.	55.8	30.00	36.40	34.40
Belden, Ill.	59.4	31.60	38.00	35.60
Hebron Siding, Ill.	61.8	32.40	38.80	36.80
Zenda, Wis.	67.4	34.40	40.80	38.80
Walworth, Wis.	73.5	37.20	43.60	41.60

Bases prescribed for other types of fares

Subject to a minimum of 25 cents per trip in connection with all types of fares:

Between all points in the suburban area, one-way fares shall be based on 3 cents per mile, round-trip fares shall be 180 percent of the one-way fares, and 10-trip fares shall be 5 times the round-trip fares.

Between Chicago Union Station, on the one hand, and all other points in the suburban area, on the other, 25-trip

fares shall be 11½ times the round-trip fares, and weekly and 46-trip commutation fares, respectively, shall be 25 and 90 percent of the unrestricted monthly fares, subject to maxima of 6 and 23 times the round-trip fares.

[fol. 57] Docket No. 31742

APPENDIX

TABLE II

Summary of Out-of-Pocket Cost Studies

1954

	Respondent	Protestant
Operating Revenues	$1,833,252	$1,866,055
Operating Expenses:[1]		
Maintenance of Way & Structures	93,913	22,210
Maintenance of Equipment	647,265	441,525
Traffic	3,573	3,573
Transportation	1,517,031	1,508,607
General	8,379	8,379
Total[2]	$2,270,161	1,984,294
Union Station	305,530	44,325
Credit for non-revenue passengers	17,928	173,265
Deficit or Income	$ 724,511[3]	9,701[4]

[1] Including payroll taxes.
[2] Excluding Union Station.
[3] Deficit.
[4] Income.

[fol. 58] ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 21st day of November, A. D. 1955.

No. 31742

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD

No. 11703

IN THE MATTER OF INTRASTATE RATES WITHIN STATE OF ILLINOIS

No. 26550

PASSENGER FARES AND SURCHARGES

It appearing, That, by order dated March 4, 1955, the Commission instituted an investigation into the lawfulness of the interstate and intrastate fares within the Chicago suburban area of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, including the question of whether the outstanding orders in Nos. 11703 and 26550, as previously modified, should be further modified in certain respects;

And it further appearing, That such investigation has been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That respondent Chicago, Milwaukee, St. Paul and Pacific Railroad Company be, and it is hereby, authorized to establish, upon not less than 30 days' notice, interstate fares within said suburban area on the bases set forth as prescribed in said report.

It is further ordered, That the outstanding orders in Nos. 26550 and 11703, as subsequently modified, be, and they are hereby, further modified so as to permit the establishment and maintenance of interstate and intrastate fares within said suburban area on the bases so prescribed.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

HAROLD D. McCOY,
Secretary.

(SEAL)

[fol. 59] EXHIBIT C TO COMPLAINT

BEFORE THE

INTERSTATE COMMERCE COMMISSION

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD.	No. 31742.

PETITION OF PROTESTANT, MILWAUKEE ROAD COMMUTERS ASSOCIATION FOR: (1) RECONSIDERATION OF THE REPORT OF THE COMMISSION IN THE ABOVE-ENTITLED DOCKET NO. 31742; AND (2) RECONSIDERATION OF THE ORDER ENTERED PURSUANT TO THAT REPORT IN THAT PROCEEDING, AND IN DOCKET NOS. 11703 AND 26550.

S. ASHLEY GUTHRIE,

FRANCIS D. FISHER,
120 South La Salle Street,
Chicago, Illinois,
Attorneys for Protestant, Milwaukee Road Commuters' Association.

TENNEY, SHERMAN, BENTLEY & GUTHRIE,
Of Counsel.

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[fol. 62] BEFORE THE

INTERSTATE COMMERCE COMMISSION

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD. } No. 31742

PETITION OF PROTESTANT, MILWAUKEE ROAD COMMUTERS ASSOCIATION FOR: (1) RECONSIDERATION OF THE REPORT OF THE COMMISSION IN THE ABOVE-ENTITLED DOCKET NO. 31742; AND (2) RECONSIDERATION OF THE ORDER ENTERED PURSUANT TO THAT REPORT IN THAT PROCEEDING, AND IN DOCKET NOS. 11703 AND 26550.

Preliminary Statement.

This is an investigation under Section 13 of the Interstate Commerce Act, pursuant to petition of Chicago, Milwaukee, St. Paul & Pacific Railroad (herein called "the Milwaukee Road" or "the Milwaukee") to determine whether intrastate suburban passenger rates in the Chicago area cause unjust discrimination against interstate commerce, and if found so to discriminate, to adjust the intrastate rates so as to remove the discrimination.

The petition alleges that the Milwaukee Road is now suffering a loss from Chicago suburban service of over $700,000 per year on an out-of-pocket basis, and of over $1,600,000 on a fully distributed basis, and that the losses thus incurred result in "disadvantage to, and undue, unreasonable and unjust discrimination against interstate commerce and shippers in interstate commerce."

The petition asks for an increase in rates of about 29% in one-way and round-trip fares and in 10-ride commutation tickets, and about 40% in other commutation tickets which the Milwaukee Road estimates would produce $518,000 in additional revenue. The object of this increase, as stated in the petition, is to reduce—but not wholly to eliminate—the out-of-pocket loss.

The actual out-of-pocket deficit, as found by the Commission, including depreciation as an out-of-pocket expense, is $306,000, as against $700,000 claimed; and if depreciation is eliminated, there is substantially no out-of-pocket loss.

The proposed report, however, allows increases, estimated to yield additional income of $383,000, about 74% of the $518,000 asked for. This increase in revenue is sufficient to eliminate the out-of-pocket loss (including depreciation) as estimated by the Commission, and to leave $77,000 over to be contributed annually to general overhead expense.

There is nothing in the record to show that interstate passenger service makes any like contribution, or that the rates of fare in Chicago suburban service are discriminatory as compared with interstate passenger rates and the income produced.

[fol. 63] THE ORDER OF THE ILLINOIS COMMERCE COMMISSION.

(Protestant's Exhibit 20.)

The principal object of the petition in the instant case, and the effect of the order, is to review and to reverse the order of Illinois Commerce Commission entered November 10, 1954, denying the petition for increase in rates and discontinuance of trains.

The order of November 10, 1954 was entered on petition filed by the Milwaukee Road on July 24, 1952, when the Milwaukee Road suburban service was operated wholly with steam locomotives. That petition asked the Illinois Commerce Commission to grant leave to the Milwaukee Road:

(1) To discontinue all off-peak suburban trains: and

(2) To increase suburban rates of fare for the remaining trains by 33%; or, in the alternative,

(3) If the discontinuance of off-peak trains was not allowed, to increase suburban rates of fare by 73%.

The Milwaukee Road in that case claimed an out-of-pocket deficit in suburban operations of $1,260,000, exclusive of depreciation, which the Milwaukee Road then admitted and asserted should not be considered as an out-of-pocket expense.

After extensive hearings, and a most thorough investigation, the Illinois Commerce Commission, on November 10, 1954, denied the petition, both as to discontinuance of service and increase in rates. The Illinois Commerce Commission found that the operating expenses of the Milwaukee Road were grossly overstated and, furthermore, that according to the evidence, a substitution of diesel for steam locomotives would result in an annual saving in expense of more than $1,000,000.

The rates thus left in effect were, and still are, as high or higher than current rates for diesel-operated suburban service on the Burlington and Rock Island Railroads.

During the pendency of the proceeding before the Illinois Commerce Commission and after evidence had been introduced showing the saving that would result from dieselization, the Milwaukee Road began the substitution of diesels for steam locomotives on its suburban trains. The dieselization of suburban service was completed in September, 1954.

Despite the fact that (because of the types of diesels used) full economies have not been realized, it is indicated by income statements for the last quarter of 1954 that the yearly savings on the suburban service from substitution of diesel for steam operation, will be close to the $1,000,000 estimate above referred to.

As a result of operating economies thus effected, operating expenses are less than they were when the present rates were fixed. Operating income is, however, greater, and even on the Milwaukee Road's figures, it is economically much better off than when the Illinois Commerce Commission entered its order of November 10, 1954 denying the requested increase in rates.

[fol. 64] The order of the Interstate Commission, now complained of, directs that the Milwaukee Road's suburban

fares be increased to the current level of suburban fares on the Chicago & North Western although it is admitted in the record that the operations are not comparable. North Western fares were fixed for steam locomotive operation and no similarity is shown between operating conditions on the North Western and those on the Milwaukee. On the contrary, counsel for the Milwaukee, at the hearing, stated that there was no basis for a comparison between the operation of the North Western and the operation of the Milwaukee (see pp. 60-61, *post*).

Protestant contends that there is no sound basis in law or in fact for the Interstate Commerce Commission to take jurisdiction of this case, or for a review and a reversal of the recent order of Illinois Commerce Commission entered after a most thorough consideration of all pertinent facts.

Assignments of Errors Relied Upon.

The ultimate conclusion in the Commission report is that, for the reasons set forth in the statements and findings, and to avoid discrimination against interstate commerce, the intrastate fares of the Milwaukee Road in the Chicago suburban district should be increased as set forth in Appendix, Table I, to the report.

The order provides that if the Illinois Commerce Commission does not enter an order within 60 days adjusting the Milwaukee Road's fares as recommended in the report, the Interstate Commerce Commission will consider entering an appropriate intrastate order (See Order).

Protestant charges that the foregoing conclusion and the order based thereon—and the statements and findings set forth in the report, upon which they rest are erroneous.

The Commission should have found (1) that there has been no showing that the intrastate rates of fare in the Chicago suburban service of the Milwaukee Road are unjustly discriminatory; and (2) that the Interstate Commerce Commission has no jurisdiction to review, modify, or reverse the order of the Illinois Commerce Commission sustaining and refusing to modify those rates.

In support of this general exception, Protestant specifies the following errors in the report and order:

[fol. 65]

I.

1. The Commission should have found that it cannot properly review, modify, or reverse the order of the Illinois Commerce Commission fixing or sustaining the present rates of fare in the Chicago suburban service of the Milwaukee Road: because:

(a) The State's jurisdiction over intrastate fares is exclusive, unless it is clearly shown that the fares, as fixed by the State Commission, result in unjust discrimination against interstate commerce; and

(b) The decision of the Illinois Commerce Commission, here attacked, has been proved by the evidence in this case to have been correct on the record as made by the Milwaukee Road in that case; it is not properly subject to review, modification, or reversal by this Commission.

II.

2. The report errs in finding that the Milwaukee Road's present suburban fares do not produce sufficient revenue to cover out-of-pocket cost of service (Sheet 11, 9) and in not finding to the contrary.

(a) The report errs in finding that depreciation of coaches and locomotives, and certain maintenance of way charges are out-of-pocket costs (Sheets 6, 7, 8; Appendix, Table II) and in not finding to the contrary.

(b) It follows that the Commission erred in finding that the Milwaukee Road's present suburban fares do not produce sufficient revenue to cover out-of-pocket costs of service (Sheets 9, 11).

III.

3a. The report errs in finding that the prescribed fares will be just and reasonable (Sheet 12) and in not finding to the contrary.

3b. The report errs in stating that there is a strong similarity between the suburban territory served by the Milwaukee and that served by the North Western and in basing rates for the Milwaukee Road on rates charged by the North Western Railroad in Chicago suburban service (Sheets 9-10).

IV.

4. The report errs in not finding that the present rates of fare of the Milwaukee Road are currently at a level comparable to those Chicago railroads equipped with diesels.

V.

5. The report errs in finding that the present intrastate fares of the Milwaukee cause undue, unreasonable and unjust discrimination against interstate commerce.

[fol. 66] RELIEF SOUGHT.

Petitioner asks:

1. That the Commission reconsider its report and order herein; and that upon such reconsideration the Commission find and order:

(a) That there has been no showing that the intrastate rates of fare in the Chicago Suburban service of the Milwaukee road cause undue, unreasonable, or unjust discrimination against interstate commerce;

(b) That the Interstate Commerce Commission has no jurisdiction to review, modify or increase the rates in such suburban service;

(c) That the petition of the Milwaukee Road asking for an investigation under Section 13 of the Interstate Commerce Act, and for an increase in Illinois intrastate rates of fare, be dismissed;

2. That the Commission by special order:

(a) Stay the operation of the order heretofore entered herein, pending ruling on the petition for reconsideration; and

(b) In the event that this petition for reconsideration should be denied, extend, for a period of 60 days after entry of the order denying this petition, the time given to the Milwaukee Road and the Illinois Commerce Commission "in which to adjust the intrastate fares on the bases prescribed."

BRIEF IN SUPPORT OF THE PETITION FOR RECONSIDERATION.

I.

THE INTERSTATE COMMERCE COMMISSION CANNOT PROPERLY REVIEW, MODIFY, OR REVERSE THE ORDER OF THE ILLINOIS COMMERCE COMMISSION SUSTAINING THE PRESENT RATES OF FARE IN THE CHICAGO SUBURBAN SERVICE OF THE MILWAUKEE ROAD.

A.

The State's Jurisdiction Over Intrastate Fares Is Exclusive Unless It Is Clearly Shown That the Fares, as Fixed by the State Commission, Result in Unjust Discrimination Against Interstate Commerce.

This is an investigation by the Interstate Commerce Commission of intrastate rates imposed by the authority of the Illinois Commerce Commission. The investigation was instigated by petition of the Milwaukee Road pursuant to Section 13(4), which reads, as far as material, as follows:

"(4) *Duty of Commission where State regulations result in discrimination.*

Whenever in any such investigation [*i.e.*, an investigation of rates fixed by state authorities] * * * the commission * * * finds that any such rate, fare, charge * * * or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on

the one hand and interstate or foreign commerce on [fol. 67] the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce * * *, it shall prescribe the rate, fare, or charge, or the maximum or minimum * * * thereafter to be charged * * * in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination."

Section 13 does not grant to the Interstate Commerce Commission complete authority over intrastate rates.

The wording of the Interstate Commerce Act and judicial interpretation thereof show clearly that this power to set aside State rate regulations exists for the sole purpose of freeing interstate commerce from unfair and discriminatory intrastate rates imposed by State action. When a State has made or imposed such rates upon a carrier, relief is possible under Section 13. In all other cases, intrastate rates are subject only to State regulation.

The leading case interpreting Section 13 is *North Carolina* v. *United States*, 325 U. S. 507, where the court said, (page 510-511):

"Since the enactment of Section 13(4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate.

* * * * * * *

A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to federal rates must meet 'a high standard of certainty.' *Illinois Central R. Co.* v. *Public Utilities Commission*, 245 U. S. 493 (510). Before the Commission can nullify a state rate, justification for the exercise of the federal power must clearly appear'."

The Interstate Commerce Commission thus has no jurisdiction over an order of a State Commission fixing intrastate rates except when such rates are clearly shown: (1) to be discriminatory as between intrastate and interstate passengers; or (2) otherwise to result in unjust discrimination against interstate commerce.

As appears below, no such showing was made in this case and the Commission thus has no jurisdiction to fix intrastate suburban rates in this proceeding.

B.

The Decision of the Illinois Commerce Commission, Here Attacked, Has Been Proved by the Evidence in This Case to Have Been Correct on the Record as Made by the Milwaukee Road in the Illinois Commerce Commission Case; It Is Not Properly Subject to Review, Modification, or Reversal by the Interstate Commerce Commission.

In 1952, the Milwaukee Road petitioned Illinois Commerce Commission for an increase in fares sufficient "to permit operation of the Chicago suburban service without an out-of-pocket loss." The order entered in that proceeding is Exhibit 20 in this case.

[fol. 68] The alleged losses claimed by the Milwaukee Road in the case before the Illinois Commerce Commission were incurred in 1952, when the Milwaukee Road was operating its suburban service with steam locomotives (Ex. 20, p. 3).

The Illinois Commission found "that conversion to diesel operation would reduce petitioner's [Milwaukee's] operating costs approximately $1,000,000 per year," and that after such saving, the out-of-pocket expenses would be exceeded by revenues (Ex. 20, p. 10). On that basis, the Illinois Commission denied the proposed increase in fares.

The evidence in the present proceeding completely supports the Illinois Commission, if the same accounting basis is used—as it must be if the fairness of the Illinois Commission's Order is to be reviewed.

In the 1952 case before the Illinois Commission, the Milwaukee Road expressly represented that depreciation was not, and should not be considered as an out-of-pocket expense. As stated by the Milwaukee Road in its Exhibits 25 and 26 in the Illinois case (included in Protestant's Ex. 21 of the current case) depreciation of locomotives and coaches is "not included in the out-of-pocket cost."

Likewise, in the case before the Illinois Commerce Commission, the Milwaukee Road did not include in out-of-pocket expense, certain maintenance-of-way accounts involving maintenance of facilities (such as road bed, etc.) which would have to be maintained even if there were no suburban service.

As to the reasons for not including those amounts—as well as depreciation—among the items included in out-of-pocket expenses in the Illinois case, R. S. Stephenson, Comptroller of the Milwaukee Road, testified (Tr. 158):

> "In the case before the State [*i. e.*, the Illinois Commerce Commission] there was such a margin between the expenses and revenues that some of the items did not seem important at the time."

If operating figures found by the Examiner in the present case are adjusted so as to eliminate the items of depreciation and the maintenance-of-way accounts not claimed as out-of-pocket expenses in the Illinois case, little if any out-of-pocket deficit is shown.

This appears from the tabulation appearing on the following page:

[fol. 69]

OPERATING STATEMENT FOR 1954

(On Basis of Last 4 Months)

As Found by This Commission

Line				
1	Revenue (Actual for year, Ex. 12)			$1,799,140
2	Expenses (on basis of last 4 months)		$2,269,404	
3	Less credit for non-revenue passengers		164,226	2,105,178
4	Deficit as found by Commission			($ 306,038)

As Adjusted to Compute Revenue on Present Operating Basis and to Compute Expense on Basis Presented by Milwaukee Road in Illinois Commerce Commission Case.

5	Revenues computed on basis of last 4 months (Ex. 13)		$1,865,055	
6	Less headend revenue		39,105	
7	Net revenue as adjusted			$1,825,950
8	Unadjusted net expense (L. 3)		$2,105,178	
9	Less depreciation included by Commission in out-of-pocket expense (Report, Sh. 6)	$195,004		
10	Less headend expense	6,240	$ 188,764	
11	Adjustments in Maintenance of Way Expense:			
	Amount found by Commission (App. II)	$ 93,913		
12	Amount remaining after excluding accounts eliminated by Milwaukee in Ill. Com. Com. Case (Ex. 34)	22,210		
13		$ 71,703		
14	Less headend expense	2,295		
15	Net Adjustment in Maintenance of Way Expense		$ 69,408	
16	Total deductions to adjust expense figures		$ 258,172	
17	Expense as adjusted (L. 8 minus L. 16)			$1,847,006
18	Adjusted Deficit for Year 1954			($ 21,056)

The deficit of $21,056, shown on the adjusted basis in the tabulation, is for a period including 15 days in September, 1954, when steam locomotives were still in use on some suburban trains. It also includes the expenses of operating certain diesel locomotives not best adapted to suburban service which were then being tried on an experimental basis.

Giving effect to those factors, the figures in evidence support the Illinois Commerce Commission's finding that there would be no out-of-pocket deficit in suburban service at present rates and under diesel operation.

This finding of the Illinois Commerce Commission was made on the case presented by the Milwaukee Road, which specifically claimed that it wanted compensation for out-of-pocket expenses only; and that there should not be included in those expenses the items of depreciation and maintenance of way which are eliminated in the adjustments in the foregoing tabulation.

The order of the Illinois Commerce Commission refusing to increase the present rates was correct on the case presented. It should not be disregarded, modified or reversed by the Interstate Commerce Commission.

If (as we deny) present circumstances require modification of that order, application for such modification should be made to the Illinois Commerce Commission. That Commission has primary jurisdiction over intrastate rates, unless it clearly appears that its orders with respect to those rates, were made without regard to resulting discrimination against interstate commerce.

[fol. 70] II.

THE MILWAUKEE ROAD'S PRESENT SUBURBAN FARES PRODUCE SUFFICIENT REVENUE TO COVER THE OUT-OF-POCKET COSTS OF SERVICE.

As above shown, the Milwaukee Road did not, in the proceeding before the Illinois Commerce Commission, claim that charges for depreciation of coaches and diesels, or the charges for maintenance of way referred to above, were out-of-pocket expenses to be considered in determining whether or not the suburban service was operating at a loss.

The Commission, nevertheless, holds that these items should be considered to be in the same category as actual expenditures of cash required in the operation of the suburban trains.

There is no basis in this case for allowing the items in question as out-of-pocket expense.

1.

An examination of the depreciation schedule of the Milwaukee Road on suburban coaches (Ex. 9) shows that most of the equipment will be fully depreciated in two or three years. Actually, in many instances, the coaches have long ago been fully depreciated.

It further appears from the testimony of J. J. O'Toole, general manager of the suburban service (Tr. 108-9) that the majority of diesel locomotives used in suburban service were transferred from through service when the lines upon which they were used, were discontinued, and that in many instances, the diesel locomotives were larger than required for suburban service. The effect was to load the suburban service with depreciation charges that would accrue in any event to the through service.

2.

The maintenance of way accounts included as out-of-pocket costs in the report (Sheets 6, 7, 8) aggregate $93,913, whereas, if only those accounts are included that were included in the case before the Illinois Commerce Commission, the amount would have been $22,210 (Appendix II of the Report).

The maintenance of way accounts totalling $71,703 were added by the Comptroller, R. S. Stephenson, under his interpretation of the formula recommended to the Interstate Commerce Commission by the Cost Section of the Bureau of Transport Economics and Statistics, known as "Rail Commutation, 10-43."

Mr. Stephenson admitted in his testimony (pp. 158-9) that he knew of this formula when the case was presented to the Illinois Commerce Commission, but felt that the items mentioned should not be included as out-of-pocket expense.

The allocation of maintenance of way items in question to out-of-pocket expense is without merit in fact. The

Milwaukee Road should be required in this proceeding to adhere to the same allocation of out-of-pocket expense as made by it before the Illinois Commerce Commission.

[fol. 70-A] As shown above, if the depreciation and the maintenance of way accounts referred to are eliminated from out-of-pocket expense, the out-of-pocket deficit disappears—or is reduced to a trivial amount.

III.

THE COMMISSION ERRED IN FINDING THAT THE FARES PRESCRIBED IN THE ORDER WILL BE JUST AND REASONABLE, AND IN BASING THOSE FARES ON RATES CHARGED BY THE NORTH WESTERN RAILROAD IN CHICAGO SUBURBAN SERVICE.

The report finds (Sheet 12) that the increase in fares approved for the Milwaukee Road will result in fares that are just and reasonable for the future.

The foregoing finding rests primarily on the statement (Sheets 9-10) that there is "a strong similarity" between the Milwaukee suburban service and the suburban service of the North Western and hence that the schedule of North Western fares summarized in the report (Sheet 3) should be used as a basis in fixing fares for the Milwaukee.

There is no evidence to support the finding and conclusion that the Milwaukee Road's suburban operation is similar to that of the North Western, and that the same rates of fare should be prescribed for the Milwaukee Road as those fixed for the North Western.

The conclusion that there is "a strong similarity" between the suburban service of the two roads is based on an incorrect reference to the testimony of J. K. Pain, Assistant General Passenger Agent of the Milwaukee Road (Sheets 9-10).

The report states that this witness said there was "a strong similarity" between the suburban territory served by the Milwaukee Road and that served by the North Western.

The phrase, "a strong similarity," is lifted out of context. An examination of the full testimony of this witness

shows that he confined his testimony as to the similarity solely to similarity of part of the territory served, but emphasized the difference in operation.

The full colloquy between the Examiner and the witness is as follows (Tr. 119-123):

"Exam. Fuller: I would like to ask a question which is more or less the $64.00 question. I think you ought to explain a little more just why you are proposing these different bases and why you are proposing a higher basis than the North Western basis when you were at one time on the same basis.

"A. Well, of course, I am not prepared to go into the cost or the expense. I believe there is a difference in the operation of the two roads. I think each road has a different,—

"Exam. Fuller: I just wanted to ask that question from the standpoint of traffic.

"The Witness: Well, I am really not prepared to go into the cost, as I say, or the expense. That is a little bit out of my line. But, the increase, of course, endeavored to be figured on the most equitable basis that would recover our losses. That is the only way I can answer it now. A basis that would be equitable, that would be fair to the suburban passenger.

"Exam. Fuller: You said your increased revenue would be $518,000.

[fol. 71] "The Witness: Yes, $518,000 in round figures.

"Exam. Fuller: I believe the North Western's one way basis in the suburban area is three cents with a minimum of 20 cents.

"The Witness: Yes.

"Exam. Fuller: What are you proposing?

"The Witness: We are proposing 3.2.

"Exam. Fuller: With a minimum of 25 cents?

"The Witness: Twenty-five cents.

"Exam. Fuller: Why do you think you should get more from a traffic standpoint than the North Western?

"The Witness: Well, this is off the record.

"Exam. Fuller: No, I want this on the record.

"The Witness: Well, I really couldn't—I don't know why we should get any more unless probably our conditions are different on our railroad. We probably need more money. Need more revenue."

* * * * *

"Exam. Fuller: Well, so far as the nature of the suburban communities you serve, and the nature of your line—you have two lines. The North Western has three, I understand. Your territory is pretty similar.

"The Witness: Well, in what respect, sir? You mean geographically or in operation, or what?

"Exam. Fuller: I am just talking about the nature of the suburban community.

"The Witness: Yes, you could probably say there is strong similarity.

"Exam. Fuller: That is all I have. Are there any other questions now?"

Following the foregoing colloquy, the attorney for the Milwaukee made the following statement (Transcript, page 123): "We do not offer these North Western fares as criteria of what our fares should be."

It is on this evidence that the Commission rests its decision to grant to the Milwaukee the fares charged by the North Western. No evidence was offered showing similarity of equipment, service, or operating conditions. In fact, the Milwaukee expressly refuted the propriety of a comparison of its rates with those of the North Western.

The record shows that the lines are not comparable. The present suburban North Western rates are based upon a suburban operation of 72 steam locomotives and only 3 diesel locomotives (Transcript 367) as against a complete diesel operation on the Milwaukee. A comparison of the cost of the Milwaukee suburban operation under steam and diesel locomotives shows that the diesel operation costs the Milwaukee approximately $900,000 a year less than steam (Exhibit 34).

No comparison may properly be made between a steam and diesel operation. This has been recognized by the Interstate Commerce Commission. The proceeding in which the North Western's Chicago suburban fares were raised to their present high level was *Commutation and Multiple Fares between Illinois and Wisconsin*, 288 ICC 15. In that case the Commission order includes the following: "The above analysis [on which the Commission's order was based] relates to an existing suburban operation for the year 1951 and obviously does not contemplate the cost of some other suburban operation such as might be encountered with diesel engines; gallery-type cars and Budd cars."

[fol. 72] The Interstate Commerce Commission has also noted the fact that the Milwaukee division of the North Western carries no freight whatsoever and that the entire costs there must be borne by passenger traffic. *Commutation Fares Between Chicago and Wisconsin*, 279 ICC 773, 777-778.

The North Western basis cannot be justified on any comparison of operating conditions.

The Milwaukee suburban operation is much more comparable to the suburban operation with the Burlington and Rock Island than it is to the North Western operation. Those are the other two Chicago railroads using diesel locomotives. The Commission, nevertheless, ignores that comparison, and holds in effect that the Illinois Commission was wrong in giving weight to it. Instead, the proposed report applies the North Western formula without any evidence in the record of similarity of conditions necessary to make that formula applicable. We submit that the use of the North Western formula was not justified.

The evidence as to the comparability of the Milwaukee and North Western fails wholly to meet the "high standard of certainty" required under Section 13. (See *Illinois Central R. R. Co.* v. *Public Utilities Commission*, 245 U. S. 493 (510), cited in the opinion in *North Carolina* v. *United States*, 325 U. S. 507, 510-511, above quoted.)

IV.

THE PRESENT RATES OF SUBURBAN FARES ON THE MILWAUKEE ARE AT A LEVEL COMPARABLE TO THOSE OF THE OTHER CHICAGO RAILROADS EQUIPPED WITH DIESELS. THERE IS NO GROUND FOR RAISING MILWAUKEE FARES SUBSTANTIALLY ABOVE THAT LEVEL.

Beside the Milwaukee, the railroads that operate Chicago suburban service with diesel locomotives are the Burlington and the Rock Island. The record shows a comparison of the rates of fare on their railroads with the present and proposed rates of fare on the Milwaukee.

That comparison is summarized in the tabulation appearing on the page following.

[fol. 73]

COMPARISON OF PRESENT MILWAUKEE FARES AND FARES AS PRESCRIBED BY THE ORDER OF THIS COMMISSION WITH FARES OF OTHER CHICAGO SUBURBAN RAILROADS USING DIESEL LOCOMOTIVES. (Ex. 26; Order, Table I.)

I.

MINIMUM FARE

Type of Ticket	C. M. St. P. & P.			Burlington	Rock Island
	Hermosa (6.1 mi.)			Cicero Ave. (6.9 mi.)	Englewood (6.6 mi.)
	Present		Prescribed by this Commission	Present	Present
One-way	20 cents		25 cents	20 cents	17 cents

II.

MIDDLE DISTANCE

(Less than 21 Miles)

Type of Ticket	C. M. St. P. & P.			Burlington	Rock Island
	Bensenville (17.4 mi.)			Hinsdale (16.9 mi.)	Robbins (17.2 mi.)
	Present		Prescribed	Present	Present
	(Cents per mile)			(Cents per mile)	
One-way	2.59		3.00	2.60	2.73
Round trip	2.44		2.70	2.37	2.47
10-ride	2.44		2.70	2.37	2.47
25-ride	2.24		2.48	2.18	2.28
12-ride (weekly)	1.71		2.18	—	1.74
46-ride (monthly)	1.61		2.05	1.79	1.45

III.

LONG DISTANCE

Type of Ticket	C. M. St. P. & P.				Burlington	Rock Island
	Present		Prescribed		Present	Present
	Elgin (36.8 mi.)	Fox Lake (49.5 mi.)	Elgin (36.8 mi.)	Fox Lake (49.5 mi.)	Aurora (38 mi.)	Joliet (40.2 mi.)
	(Cents per mile)		(Cents per mile)		(Cents per mile)	
One-way	2.55	2.53	3.00	3.00	2.55	2.36
Round trip	2.31	2.27	2.70	2.70	2.30	2.18
10-ride	2.31	2.27	2.70	2.70	2.30	2.18
25-ride	2.12	2.09	2.48	2.48	2.12	2.00
12-ride (weekly)	1.27	1.16	1.52	1.35	—	1.16
46-ride (monthly)	1.19	1.09	1.42	1.26	1.19	1.09

It thus appears that present Milwaukee fares are at the same level as those on the Burlington and Rock Island, and any increase in the Milwaukee fares would raise them substantially above that level. The Commission erred in not finding this to be the fact, and in not finding that the order of the Illinois Commerce Commission should be adhered to, and that an increase in present Chicago suburban fares of the Milwaukee road would not be justified.

V.

THERE IS NOTHING IN THE RECORD TO SHOW THAT THE PRESENT FARES IN THE MILWAUKEE SUBURBAN SERVICE ARE UNREASONABLY LOW OR DISCRIMINATORY AS COMPARED WITH LIKE FARES IN INTERSTATE COMMERCE, OR THAT THE INCREASED FARES PRESCRIBED BY THE COMMISSION WOULD BE FAIR AND REASONABLE.

The jurisdiction of this Commission to fix intrastate rates of fare must rest on the conclusion (Sheet 12) that the present rates result "in undue, unreasonable or unjust discrimination against interstate commerce."

There is no evidence to support that finding.

The evidence, taken most favorably to the Milwaukee Road, shows an annual out-of-pocket deficit from the suburban services amounting to $306,038 (Sheet 9)—and that deficit would be eliminated if adjustments were made as shown in the tabulation at p. 55, above.

The report finds that the increase in fares, therein prescribed, would eliminate the out-of-pocket deficit and would leave approximately $77,000 to apply against "indirect costs."

[fol. 74] The report finds that the suburban fares, as so increased, would be "fair and reasonable" and that the increase is necessary to prevent discrimination against interstate commerce.

There is nothing in the record to support either finding.

The report (Sheet 10) states that the Milwaukee Road suffered a deficit from all passenger operations in 1954, of

$22,824,532, on a fully distributed cost basis. Of that amount, a very small part comes from Chicago suburban operations.

There is no evidence as to nonsuburban interstate fares, other than a tabulation read into the record (Tr. 371-2) showing certain interstate fares to be as follows:

From Chicago to:	Distance-Miles	Fare Cents per Mile
Sturtevant, Wis.	62	2.53
Milwaukee, Wis.	85	2.49
Janesville, Wis.	99	2.30
Madison, Wis.	140	2.32
Minneapolis, Minn.	421	2.42

The fares listed are all at lower rates per mile than the present suburban fares, except the fare to Sturtevant, which is at about the same rate as the present rate of fare to the end of each suburban line.

If the prescribed increase is allowed, suburban one-way fares will all be raised to at least 3 cents per mile and will be at a 20% to 25% higher rate than the through fares listed.

There is, therefore, no basis for the finding that intrastate fares must be higher in order to be "fair and reasonable" and to prevent discrimination against interstate traffic.

If we consider the overall deficit claimed to be incurred in passenger service, it is a fair inference that Milwaukee suburban service at present rates is contributing more than its share—as compared with the contribution of interstate passenger traffic—to the burden of operating the Milwaukee Road, and that a raise in rates would discriminate against the suburban service as compared with interstate traffic. Certainly, the evidence does not indicate the contrary.

The report states (Sheets 10-11):

> "In 1954, in terms of net railway operating income, respondent earned from its freight operations $37,393,-

> 050, and suffered a deficit from its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit, and results in an undue burden on respondent's freight operations, state and interstate."

The foregoing statement does not set forth a fair basis for increasing suburban passenger rates. If the rule stated was followed, suburban rates would be increased to the full extent that traffic would bear, irrespective of whether or not the amount charged is a fair and reasonable price [fol. 75] for the service rendered, and irrespective of whether or not the rates fixed discriminate against *intrastate* service.

The question as prescribed by the statute, is whether the present rates of fare result in unfair, unreasonable and unjust discrimination against passengers or localities in interstate commerce, or against interstate commerce generally.

To determine that question, rates and services in intrastate commerce must be compared with like rates and services in interstate commerce. There is no basis for such a comparison in the record in this case.

Petitioner asks:

1. That the Commission reconsider its report and order herein; and that upon such reconsideration, the Commission find and order:

> (a) That there has been no showing that the intrastate rates of fare in the Chicago Suburban service of the Milwaukee Road cause undue, unreasonable, or unjust discrimination against interstate commerce;

(b) That the Interstate Commerce Commission has no jurisdiction to review, modify or increase the rates in such suburban service;

(c) That the petition of the Milwaukee Road asking for an investigation under Section 13 of the Interstate Commerce Act, and for an increase in Illinois intrastate rates of fare, be dismissed.

2. That the Commission by special order:

(a) Stay the operation of the order heretofore entered herein; and

(b) In the event that this petition for reconsideration should be denied, extend, for a period of 60 days after the entry of the order denying this petition, the time given to the Milwaukee Road and the Illinois Commerce Commission "in which to adjust the intra state fares on the bases prescribed."

Respectfully submitted,

S. Ashley Guthrie,
Francis D. Fisher,
Attorneys for Protestant,
Milwaukee Road Commuters' Association.

Tenney, Sherman, Bentley & Guthrie,
Of Counsel.

Certificate of Service.

I certify that I have this day served the foregoing Petition for Reconsideration upon all parties to this proceeding by causing to be mailed by first-class mail, a copy thereof, properly addressed, charges prepaid, to each party.

Dated February 8, 1956.

Francis D. Fisher.

[fol. 79] EXHIBIT D TO COMPLAINT

Before The

INTERSTATE COMMERCE COMMISSION

Chicago Intrastate Suburban Fares of Milwaukee Railroad	No. 31742

PETITION OF ILLINOIS COMMERCE COMMISSION FOR RECONSIDERATION AND REHEARING

Now comes the ILLINOIS COMMERCE COMMISSION and respectfully urges a reconsideration and a rehearing of the Report of the Commission in the above entitled matter, and as grounds therefor shows to the Commission the following:

I.

The Commission should reconsider its report wherein it found and determined that the suburban passenger fares as authorized by the Illinois Commerce Commission create an undue and unreasonable advantage or preference in favor of intrastate commerce and an undue, unreasonable, or unjust discrimination against interstate commerce.

The jurisdiction of the Interstate Commerce Commission over intrastate suburban fares depends solely upon Section 13(4) of the Interstate Commerce Act (49 USCA, 13(4)). The authority conferred by that section did not deprive the states of their primary right to regulate intrastate rates, *North Carolina v. United States*, 325 US 507, and the Federal Commission's power is dominant *only* insofar as necessary to remove an undue burden or discrimination against interstate commerce. As held by the Supreme Court in the *North Carolina* case, at page 511:

[fol. 80] "When this point—not always easy to mark —is reached, *and not until then*, can the Interstate Commerce Commission nullify a stat-prescribed rate. * * *

"Before the Commission can nullify a state rate, *justification for the exercise of the federal power must clearly appear.*" (Emphasis added)

The evidence and the record in this proceeding do not justify the imposition of federal jurisdiction. The Report of the Commission fails to find or even recite that the conditions existing between intrastate passenger service and interstate passenger service are substantially the same in order to base a finding of unfair discrimination. In fact, the evidence conclusively shows the contrary since the equipment, service, etc., in the intrastate passenger runs are greatly inferior to the interstate. Nor is a finding that the suburban business results in a deficit, even of out-of-pocket cost, sufficient in and of itself to justify the ultimate finding and determination of unreasonable discrimination. In *North Carolina v. United States* (supra) it was held that a finding that interstate passengers paid higher fares for the same facilities is inadequate to support the nullification of state rates on the ground that they constitute unfair discrimination.

The Commission's report determines that after deducting the total out-of-pocket cost from the total revenues of the suburban service, there results an out-of-pocket deficit of $306,038; that if fares were increased an average of 20%, plus the additional increase from a minimum 25 cents per trip, the total increased revenue based upon the 1954 movement would be approximately $383,000 which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes of $77,000 annually. After making such a determination, the Commission's report finds that the respondent earned in 1954 from its freight operations (intrastate and interstate) $37,393,050 and suffered a deficit from its total passenger operations of $22,824,532 resulting in net rail operating income of [fol. 81] $14,568,518. The report then states, "to the extent that this suburban service fails to meet the out-of-pocket cost and make all the contributions that it reasonably can to respondent's indirect cost, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, state and interstate."

While it may be true, that to the extent that the suburban service fails to meet the out-of-pocket cost and make a contribution to respondent's indirect cost, respondent's passenger deficit is enhanced, yet, it does not follow that this necessarily establishes an "*undue* burden upon its freight operations, state and interstate," and certainly, does not establish the undue or unreasonable burden *on interstate commerce* as required by Section 13(4).

We feel that in order to substantiate a Section 13(4) jurisdiction, it is incumbent upon respondent to show not only a deficit in intrastate passenger service, but that the intrastate freight revenues are not sufficient to eliminate that deficit in substantially the same proportion that the interstate freight eliminates the interstate passenger deficit. The Commission's report shows that respondent suffers a deficit from passenger service operation of approximately $23,000,000 without more than $1,000,000 being attributable to suburban service (which would allow approximately $700,000 for indirect costs) leaving an interstate passenger deficit of approximately $22,000,000. The report further shows that respondent earned from its freight operations over $37,000,000, but does not show how much of that income is attributable to Illinois intrastate freight operations. If the Illinois intrastate freight contributed only 4% of the total, such intrastate freight would more than off-set the suburban passenger deficit to a greater proportion than the inter-state freight provides the interstate passenger service.

We realize tha *King v. United States*, 344 US 254 authorizes the Interstate Commerce Commission in prescribing intrastate freight rates to give weight to deficits in passenger revenues, yet the report of the Commission in [fol. 82] the instant matter goes beyond the doctrine of the *King* case. A railroad need not make the same amount of money on each article handled, *Lowden v. Illinois Commerce Commission*, 376 Ill. 225, 233, *Eastern Passenger Fares in Coaches*, 227 ICC 17, 25, and rates which are not even compensatory are not necessarily wrong, *Baltimore and Ohio R. Co. v. United States*, 345 US 146, at page 148:

"There is and has been no claim that the challenged rates will make any one of the complaining railroads operate its entire business at a loss, *or even carry all fresh vegetables at a loss.*" (Emphasis added)

While the *Baltimore and Ohio* case was not a Section 13(4) rate discrimination case, yet, the doctrine of just compensation for the service applies and certainly there should be some showing of whether or not all intrastate operations result in a loss or profit.

II

The authority of the Interstate Commerce Commission is limited to removing only the *unreasonable* discrimination in interstate commerce, and the Commission should reconsider its report since the report shows on its face that there is no *unreasonable* discrimination:

The report of the Commission states that the fares which the Commission approves would increase the revenues of the respondent approximately $383,000 which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes of approximately $77,000 annually. Do the fares as approved by the Commission raise the present intrastate rates "only insofar as necessary to alter rates which injuriously affect interstate transportation?" *North Carolina v. United States*, 325 US 507, 511. We think that the rates approved by the Commission more than remove the undue discrimination, if any, which might be said to exist. There should be no greater proportionate burden on intrastate commerce than on interstate commerce. In other words, if the burden is substantially the same there is no discrimination. Consequently, in [fol. 83] this case where the Commission finds a total out-of-pocket deficit of $306,038 resulting from suburban passenger service and a deficit from all passenger operations of $22,824,532 we have a ratio of $\frac{306}{22,824}$, or approximately 1.3%. It would therefore appear that the burden of the suburban passenger service operation is at best no more than 1½% of the total burden of the deficit from passenger

operations, so that in removing the burden of suburban passenger operations, the suburban passenger revenues should be increased no more than 1½%. The Commission has found that the total revenues from the suburban service were $1,799,140 and 1½% thereof is $26,987. Consequently, an alteration in suburban fares resulting in an increase of approximately $27,000 would remove any alleged unjust discrimination which the suburban passenger service is imposing upon the interstate operations. A burden of only 1½% of the total passenger burden is certainly de minimus and should not justify any interference with interstate rates. We think that the "scrupulous regard for the rightful independence of state governments" which deters federal courts from enjoining state regulatory bodies (*Alabama Commission v. Southern Railway Co.*, 341 US 341, 349) should equally deter the Interstate Commerce Commission from granting the *extraordinary relief* of a Section 13(4) petition. The Interstate Commission should use its dominant jurisdiction to increase intrastate rates *only* when the burden upon interstate operations is manifest and truly unreasonable. Certainly, the statement in the Commission's report that any failure of the intrastate business to "make all the contribution that it reasonably can" (Sheet 10-11) does not meet the test of undue burden. If the doctrine of the present report is maintained, then the rule for establishing rates will be "how much will the traffic bear" or the ability to pay rule.

While we believe that no increase is justified in intrastate rates and that the Commission actually lacks jurisdiction because of a failure of respondent to show an undue burden on interstate commerce, certainly the maximum should be no more than the removal of out-of-pocket loss. In view of the tremendous passenger deficit which is largely interstate, and considering that the service offered on the suburban passenger line is inferior to that offered [fol. 84] interstate, any increase in suburban fares which would do more than merely remove the actual out-of-pocket expense is beyond both reason, logic and equitable understanding.

The comparison of the fares of the respondent with the fares of the North Western Railroad as a ground for

increasing the respondent's tariffs is without justification or any legal or logical basis. "A strong similarity" between the suburban territory served by the respondent and the North Western does not justify a parity of rates.

"Comparability" or "similarity" which would authorize similar rates should apply in more ways than just similarity of territory served. Frequency, speed and type of service along with the equipment used are of more important consideration than similarity of territory. In the instant proceeding, the record shows that the newest or latest coach used by the respondent on the suburban service was built in 1915 with the average age of about 1912, except for two passenger and baggage combination cars built in 1928. (Respondent's Exhibit 9).

While we realize that there is nothing in the record concerning the North Western Railroad's operations (the burden should be upon respondent to show the comparability if it seeks similar rates), yet, we feel constrained to quote for the Commission an editorial which appeared in the Sunday Chicago Tribune on February 5, 1956:

"BOON TO COMMUTERS

The North Western railway has ordered 16 more double deck air conditioned cars for its suburban service. Sixteen of these units already are in service. Sixteen more were ordered last June and deliveries will begin in May. The latest order will bring the total to 48 by the end of this year. Total cost of the 48 double deckers will be $6,800,000.

The railroad deserves a cheer for making this investment and for other recent efforts to improve the [fols. 85-86] suburban service. Since 1951 the North Western also has spent 6 million dollars on diesel locomotives, and 105 of the 186 daily trains are now diesel powered. The number of suburban trains operated weekly has been increased from 1,040 to 1,099.

Further hurrah will be in order when the railroad completes its dieselization program and no more commuters will be obliged to comb cinders out of their hair."

If this type of service does not justify better rates than the type of service offered by the respondent, then the North Western Railroad is foolhardy and the Illinois Commerce Commission with the commuters may as well quit and become the peons of the interstate authority.

III

The Commission should grant a rehearing in this matter in order to determine whether respondent's present suburban fares based upon a full year's actual operation do not produce sufficient revenues to cover out-of-pocket costs for such service.

We believe that even upon the record in this case there is ample evidence to show that respondent has an operating income from suburban service for the year ending December 31, 1954. In a proceeding seeking an increase in fares before the Illinois Commerce Commission, Docket No. 40486, decided by an order dated November 10, 195- (a copy of which order was received into evidence in this case), the Illinois Commission found that after dieseling suburban service, respondent's revenues would exceed its expenses by a substantial amount. The record in this proceeding shows that respondent suburban service has now been completely dieselized (since September 1, 1954) and while the evidence covering respondent's expenses embraced the full year ending December 31, 1954, yet its cost studies in connection with the dieselization of suburban service covered only the last four months of 1954. The savings [fol. 87] to be realized from the dieselization of suburban operations can not be accurately computed on the basis of only a four month's study, especially where, as the record shows, the cost of diesel fuel was computed on only a 1[illegible] day test period in December 1954 and January 1955.

The respondent is now in a position to show the actual expenses of a full year's operation with complete dieselization. This Commission should grant a rehearing in this case and direct that those figures be made a part of the record. Until a full year's actual cost of diesel operation in suburban service has been placed into evidence, no real determination can be made as to whether or not respon-

dent's present suburban fares are insufficient to cover the out-of-pocket cost of that service.

WHEREFORE, the Illinois Commerce Commission respectfully submits that this Commission should reconsider its report and grant a rehearing in this matter.

Dated at Chicago, Illinois, this 6th day of February, 1956.

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

By H. R. BEGLEY
H. R. Begley
Special Assistant Attorney General

[fol. 89] EXHIBIT E TO COMPLAINT

Interstate Com. Com.
Order Dated Mar. 2, 1956
Served, Mar. 12, 1956

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 2nd day of March, A.D. 1956.

No. 31742

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD

No. 11703

IN THE MATTER OF INTRASTATE RATES WITHIN STATE OF ILLINOIS

No. 26550

PASSENGER FARES AND SURCHARGES

These proceedings having been duly heard and full investigation of the matters and things involved having been had, and this Commission having, on November 21, 1955, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and respondent and the Illinois Commerce Commission having been given a period of 60 days from the service of said report in which to adjust the intrastate fares in issue in this proceeding in accordance with the findings in said report:

And it appearing, That, on February 3, 1956, the Illinois Commerce Commission filed a petition for reconsideration of said report and for rehearing, that protestant Milwaukee Road Commuters' Association has filed a petition for reconsideration of said report, and that respondent has filed a reply to said petitions;

And it further appearing, That this Commission has given consideration to said petitions and reply, and has reached the conclusion that there has been presented no [fol. 90] showing of error of fact or law in said report, and that no sufficient grounds have been presented for the reconsideration and rehearing requested;

It is ordered, That the said petitions be, and they are hereby, denied;

It is further ordered, That respondent be, and it is hereby, notified and required to cease and desist on April 20, 1956, and thereafter to abstain, from practicing the undue, unreasonable, and unjust discrimination found to exist by Finding No. 2 of said report;

It is further ordered, That respondent be, and it is hereby, notified and required to establish on April 20, 1956, upon not less than 5 days' notice to this Commission and the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain for intrastate travel between points in respondent's Chicago suburban area within the State of

Illinois fares no lower than the bases set forth in Finding No. 3 of said report;

And it is further ordered; That this order shall remain in effect until the further order of the Commission.

By the Commission.

HAROLD D. McCOY
Secretary

(SEAL)

[fol. 92] EXHIBIT F TO COMPLAINT

Entered November 10, 1954

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

40486

In the Matter of the Application of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for Authority to Discontinue and to Consolidate Certain Suburban Trains and to Increase One Way, Round Trip and Commutation Fares in Suburban Service.

ORDER

By the Commission:

By petition filed July 24, 1952 as amended, Chicago, Milwaukee, St. Paul and Pacific Railroad, hereinafter referred to as "Petitioner", requests authority to discontinue all off-peak Chicago suburban passenger trains and consolidate certain peak-hour trains and also requests authority to increase one-way, round trip and commutation fares to such extent as will after taking into consideration the economy effected by such discontinuances and consolidation of trains, give Petitioner sufficient revenues to permit operation of the Chicago suburban service without an out-of-pocket loss. No specific rate proposals were submitted but Petitioner asserts that fares must be increased 71.9%

to produce revenues sufficient to meet out-of-pocket costs on basis of present scheduled operations and 32.7% if discontinuance of off-peak service and consolidation of certain peak-hour trains are permitted. Petitioner's suburban service is conducted over two lines of railroad; one the West Line, extending from Chicago to Elgin, Illinois and the other the North Line, extending from Chicago, Illinois to Walworth, Wisconsin via Rondout, Illinois. Both lines intersect at a point a short distance beyond Western Avenue in Chicago. Present and proposed train schedules are set forth in Appendix A.

Milwaukee Road Commuters' Association, a non-profit corporation, organized to promote and advance the interests of the communities served by the commuter service of the Chicago, Milwaukee, St. Paul and Pacific R. R. intervened in and actively participated in the proceedings. Village officials of Bartlett, Bensenville, Itasca, Roselle, Wooddale, Fox Lake, Glenview, Hainsville, Golf, Grays Lake, [fol. 93] Libertyville, Morton Grove, Mundelein, Northbrook and Round Lake Beach also intervened and many participated in the proceedings.

Hearings on the petition commenced on October 27, 1952 and closed on July 19, 1953. Testimony was taken about 28 days during that period, the record consisting of nearly 3,000 pages of transcript and numerous exhibits. Briefs were filed by the parties and oral argument was heard by the Commission.

When this proceeding was started, Petitioner was operating the suburban service with 26 steam locomotives first assigned to through passenger service and transferred to suburban service after they had become outmoded due to Dieselization or other improvements in power in the through service. 14 of the locomotives were built in 1910; 1 in 1911; 3 in 1912; 7 in 1930 and the other in 1931, thus, 17 are more than 40 years old; 7 are 23 years old and the newest is 22 years old. Of the 26 locomotives, then in use, 18 were assigned to suburban service in 1950 or subsequent years.

The passenger carrying cars vary in age from 40 to 51 years. With the exception of two cars purchased in 1928,

all cars were built 40 or more years ago. They are remodelled sleeping cars, dining cars, parlor cars and coaches formerly used in through service. A number of these cars have been remodelled during the last few years and the cost of remodelling charged to current operating expenses. Petitioner contends and submitted data in the form of a cost study purporting to show that the suburban service is presently operated at an out-of-pocket loss. The period selected for the cost study was the six months ending June 30, 1952. The claimed out-of-pocket loss, including head-end service, for that period was $669,984. If all off-peak trains are discontinued and certain peak-hour trans consolidated as proposed, Petitioner claims the out-of-pocket cost would be reduced by approximately $18,237 per week which, after taking into consideration the loss of revenues those trains produce, would reduce the out-of-pocket deficit for the six month study period approximately $336,000. (Exhibits 27 and 28 and Record 260)

The intervenors vigorously opposed the granting of the relief sought or any part of it. They called numerous witnesses to show that public convenience and necessity will not permit the discontinuance of any off-peak suburban train, or consolidation of specified peak-hour trains; and [fol. 94] with respect to the cost data submitted by Petitioner contend that if the suburban service were modernized by substituting Diesel for steam power and cost figures compiled on a realistic basis reflecting proper apportionments to cover cost of free transportation of company employees and proper allocation of costs of the Chicago Union Station Company to suburban service, that the service would show a profit instead of a loss.

The following is summary of Petitioner's revised Exhibit No. 25, showing the revenues from suburban passenger service; out-of-pocket cost of conducting the service, after excluding cost of head-end-service, and alleged loss for the period January 1, to June 39, 1952:

Revenues from Commutation Service	$ 843,617.00
Railway Operating Expenses	Out-of-Pocket (Except head-end)
Depreciation Roadway (M of W)	0
M of W—Repairs and other Expense	14,957.00
Maintenance of Equipment	
Depreciation—Locomotives and cars	0
Repairs—locomotives	207,035.00
Repairs—cars	128,881.00
Other Expenses	0
Traffic	1,397.00
Transportation	
Supervision	0
Station Service	4,204.00
Yard Service	34,373.00
Trainmen	213,355.00
Enginemen	153,168.00
Fuel for locomotives	226,482.00
Enginehouse expense	163,369.00
Transportation supplies and expenses	86,499.00
Water, lubrication and supplies	20,053.00
Miscellaneous expenses	5,041.00
General Expenses	3,416.00
Pay roll taxes	45,868.00
Chicago Union Station	165,515.00[1]
Total	$1,473,613.00
Railway Operating Loss	629,996.00

[fol. 95] When this data was presented, Petitioner was operating the service with steam locomotives. Intervenors contend that if the railroad modernized its operations by substituting diesel locomotives for steam locomotives, which incidentally has now been done, that the operating costs would be reduced in an annual amount of approximately a million dollars. Testimony as to the practicability and savings that could be expected from a diesel-engine

[1] This figure represents the amount Petitioner contributes to the operation of the Chicago Union Station Company per contract between Petitioner and other tenant lines.

was given by Patrick A. McGee of New York, a well-known and experienced transportation engineer. Educated at the University of London, he operated the largest electrical transportation system in the world, out of Melbourne, Australia, for 5 years, 1914 to 1919. He then came to this country with the Westinghouse Electric Company. He was resident engineer in charge of electrification of the Illinois Central Railroad. In 1931 he went with the Reading Railroad and began to experiment with Diesel locomotives, finally ending in 1937 as engineer in the electromotive division of General Motors, where he stayed until he retired in 1951 and opened his own office in New York. Since then he was called to Denmark in 1952 to make a study and report on the application of Diesel power to the Danish State Railways. In New York he acts as consultant for several of the large eastern railroads.

Witness McGee made a study of the Milwaukee road suburban operation and recommended the use of 125-ton, 1500 HP. Diesel locomotives. He stated that in his opinion 18 locomotives would be required; 15 for peak-hour service and 3 to handle off-peak service, and advised that there also be 2 standbys.

The cost of locomotives would be about $165,000 per unit, making a total of $3,300,000 for the 20. It was his opinion that 3 of the locomotives could also be used for switching, leaving a net investment charge to the suburban service of $3,000,000. The purchase of the locomotives could be financed with equipment trust certificates bearing interest at 2¼% to 3%.

In support of his opinion witness McGee submitted a detailed statement of the savings by comparing the cost of operating steam power in the suburban service for the six months period ending June 30, 1952, as disclosed by Petitioner's Exhibit No. 25 (including head-end service) and the comparable cost had the service been operated with Diesel engines. The following is a summary of that data:

[fol. 96]

	Steam Locomotives	Diesel Locomotives
Locomotive Repairs	$ 211,179	$ 52,600[a]
Car Repairs	134,000	134,000
Trainmen	221,829	221,800
Engine Crew	159,251	132,000[b]
Fuel	235,477	75,000[c]
Enginehouse	169,858	35,000[d]
Train supplies and Expenses	89,935	42,000[e]
Water, lubrication and supplies	20,849	10,500[f]
Miscellaneous	5,242	5,200
Payroll Taxes	47,690	44,200
Interest on investment at 3%		45,000[g]
Total	$1,295,310	$797,300
Savings from Diesel Operation for 6 months, 1952	$498,010	

Notes:

a 350,000 train miles @ 15¢ per mile.
b 350,000 train miles @ 37.7¢ per mile.
c 1,580,000 car miles @ ½ gal. per car mile and 9½¢ per gallon.
d 350,000 train miles @ 10¢ per mile.
e 350,000 train miles @ 12¢ per mile.
f 350,000 train miles @ 3¢ per mile.
g $ 3,000,000 of $3,300,000 investment allocated to suburban service—balance to switching.

If witness McGee's estimate of the reductions in costs by operating Diesel instead of steam locomotives is sound and if traffic does not decline materially conversion to Diesel operation would seem to be the solution to most of the problems of Petitioner with respect to this service. The only rebutal offered to Mr. McGee's testimony was by Mr. John J. O'Toole, General Manager of Petitioner's eastern lines, who differed from Mr. McGee in that he thought that 19 locomotives would be needed, instead of 18, and concluded that 21 locomotives would have to be purchased rather than 20. Witness O'Toole also claimed that McGee had failed to take into account in connection with his proposed dieselization monies that would have to be invested for spare parts to maintain the locomotives; 2 spare truck

at a cost of $41,660; 1 spare engine at a cost of $33,827; 1 spare generator at a cost of $19,780; 1 spare air compressor at a cost of $1,100; minor items such as gaskets, probably $1,000; conversion of steam stalls to diesel stalls and equipment of same with platforms at an estimated [fol. 97] cost of $5,000; a fuel rack at a cost of $1,500; a diesel jack at a cost of $22,000 and certain other minor items raising the total cost of the latter to $53,500. (record 2899)

About a year after McGee testified in this proceeding, Petitioner completely Dieselized the suburban service.

Apart from conversion of steam to diesel power, the next cost controversial feature of this case appears to be the method used by Petitioner in allocating costs attributable to entering and departing the Chicago Union Station with respect to suburban trains.

The Chicago Union Station is the largest passenger depot in Chicago. It covers a large acreage, bounded roughly by the Chicago River on the East, Canal Street on the West, Jackson Boulevard on the North and Adams Street on the South. The total investment in roadway, tracks, concourse and an eight story office building, etc., is approximately $83,600,000.

The Chicago Union Station Company is owned jointly by the Pennsylvania Railroad, the Chicago, Burlington and Quincy Railroad and Petitioner, the former owning 50% and each of the latter, 25%. The parties using the Chicago Union Station Company's facilities are obligated under the terms of an Agreement between the proprietary companies to pay the wheelage proportion of the expense of operation of the station, the wheelage proportion being that portion which the number of each railroad's locomotives and cars using or required to use the station and facilities during each month bears to the total number of locomotives and cars of all the users, each locomotive to be counted as 2 cars and each suburban coach as 4/5 of a car. The Chicago and Alton Railroad Company (now Gulf, Mobile and Ohio Railroad) was admitted to use of the Union Station by Agreement of September 18, 1915. This contract insofar

as it is here applicable required Gulf, Mobile and Ohio Railroad also to pay a wheelage proportion of the Union Station operating expenses without, however, the benefit of the reduced car count on suburban cars.

Two theories of determining and allocating these costs have been submitted. First, the "out-of-pocket cost" and Second, the "relievable expense."

The "*out-of-pocket cost*" exclusive of head-end service for the study period was shown in original Exhibit No. 25 as $72,495. The "*relievable expense*", exclusive of head-end [fol. 98] service, for the study period was shown in revised Exhibit No. 25 as $165,515. The first figure purports to show the added cost of the Chicago Union Station Company of handling Petitioner's suburban trains. It includes not only out-of-pocket operating costs but a pro rate of Union Station expense with respect to property taxes, interest on bonded indebtedness and mail handling. The latter figure was obtained by the fiction of eliminating suburban service, subtracting Petitioner's locomotives and cars from the actual car count and reassigning Chicago Union Station expenses on the contractual basis to Petitioner and other railroads using the Station, upon the remaining car count proportion.

So far as we have been advised, this is the first time Petitioner has claimed that for rate making purposes, Chicago Union Station expenses should be allocated to suburban service by the "relievable expense method". This method bears no relationship at all to the out-of-pocket cost of handling suburban traffic, is determined entirely by contract between the tenant lines and if approved would saddle the commuters with payment on an investment in a facility wholly disproportionate to any required for the service. Petitioner has repeatedly used the "out-of-pocket method" in determining Chicago Union Station Company expenses fairly attributable and assignable to suburban service, both before this Commission and the Interstate Commerce Commission; (ICC Docket 28974; Ill. C. C. Dockets 31506 and 38977.) In initial Exhibit No. 25, Petitioner claims those costs, including head-end service, during the study period were $75,374. That figure was determined

after consultation between the Comptroller of Petitioner, witness Stephenson and the Auditor of the Union Station Company, witness Olson. The latter figure, however, included interest in an amount of $22,994; property taxes in an amount of $13,399; depreciation in an amount of $8,952 and an allocation to suburban service for the cost of handling mail in an amount of $9,529. Mail is no longer handled in suburban service by Petitioner, consequently the suburban service should not be charged with any part of that cost. Interest, property taxes and depreciation would not be reduced in any respect if suburban service were discontinued entirely nor does the addition of suburban service to the general passenger traffic handled by the Union Station Company add to the fixed interest, depreciation or property taxes. If these items are deducted from the amount originally claimed by Petitioner as "out-of-pocket" costs with respect to Union Station expenses, then the net out-of-pocket cost allocable to Petitioner's suburban traffic during the study period did not exceed $20,500. [fol. 99] Approximately 10½% of the total suburban passengers carried by Petitioner are company employees and they are carried free; but no allowance was made in the cost study exhibits to cover either the cost of the service or the revenues Petitioner would derive from those passengers had they been charged tariff rates. The revenue-paying commuter derives no benefit from this free transportation and since the company gives it up, we can only assume it does so because it benefits by that policy. We see no reason why that proportion of the total cost of operating suburban service represented by the pro rata share of the non-revenue passengers to all passengers carried should not be assumed by Petitioner and operating expenses for rate making purposes be reduced proportionately and accordingly. If Petitioner's Exhibit No. 25 were revised to reflect revenues, excluding head-end service, and revised to reflect expenses based on cost of diesel operation; Union Station apportioned cost reduced to $20,500 to reflect true out-of-pocket cost and the total of those costs then reduced by 10½% to reflect the amount to be borne by Petitioner for transporting its own employees, it appears that the revenues for the study period would have

been $843,617, net operating expenses $731,737, leaving a net railway operating income on an out-of-pocket basis of approximately $112,000 for the six month study period or at a rate of approximately $224,000 annually.

We now pass to that part of the petition which requests authority to discontinue all off-peak trains and consolidate others. The discontinuance of off-peak trains is but a secondary consideration in this matter. In its reply brief, Petitioner says:

> "as we stated in our opening brief, it is the purpose of this petition to secure such relief from the Commission as will permit petitioner to operate its Chicago suburban service without out-of-pocket loss. While the petition, in form, requests authority to discontinue all off-peak trains and to consolidate certain specified peak hour trains, and to recoup the balance of the out-of-pocket loss through the determination and fixing of sufficient fares, it has been made clear throughout this proceeding that the Commission is only requested to authorize the discontinuance of such trains as are not required by public convenience and necessity. In other words, so far as discontinuances or consolidations are concerned, petitioner is not making an 'all or nothing' request."

[fol. 100] The evidence in support of petitioner's request to discontinue all off-peak trains and consolidate certain specified trains consists of exhibits comparing revenues received from operating off-peak trains, and exhibits purporting to show the cost of rendering the service. The study made by petitioner extended over a period of one week with respect to the daily trains and selected Saturdays and Sundays as to trains operated on those days only. The study was made during the early part of 1952. That evidence purports to show that the cost of rendering the service is $18,237 per week and the revenues obtained $4,778 per week. The alleged weekly expense of $18,237 is based on a steam operation but the service is presently operated by Diesel power.

If the changes proposed by petitioner are approved by this Commission, it appears that anyone wishing to leave his home in the suburbs after 8:00 A.M. or desiring to return to it before 4:30 P.M. or after 6:30 P.M. on a weekday would have no available transportation. On Sunday there would be no transportation into Chicago after 8:00 A.M. on the North Line and after 7:00 A.M. on the West Line, and no transportation out of Chicago to the suburbs except at 5:30 P.M.

In addition to the elimination of the off-peak trains petitioner asks for authority to replace two trains in each direction on the North Line with a single train in each direction; and to replace 4 trains in each direction on the West Line by 2 single trains in each direction. The net result will be to substitute 6 trains for 12 trains now operating during the rush-hour periods.

The replacement is called a "consolidation," but it is actually an elimination of 6 heavily patronized trains. The statistics with respect to the trains to be eliminated are disclosed in the following table:

[fol. 101]

Trains to be Consolidated					Proposed Replacement Train			
Train No.	Time of Departure or Arrival in Chgo	No. of Cars (2 Trains Pet. Ex. 6)	Capacity (2 Trains Pet. Ex. 35)	Peak Load (2 Trains Pet. Ex. 35)	Time of Departure or Arrival in Chgo	No. of Cars in Consolidated Train (Pet. Ex. 7)	Capacity	Per Cent Ratio of Maximum Peak Load to Capacity
	North Line Northbound							
35	5:50 p.m.)			220				
131	6:47 p.m.)	13	1038	to 423	6:27 p.m.	6	458	88%
	North Line Southbound							
136	8:14 a.m.)			1180				
138	8:36 a.m.)	14	1159	to 1293	8:13 a.m.	12	948	136%
	West Line Westbound							
136	3:40 p.m.)			683				
223	4:32 p.m.)	9	737	to 757	4:32 p.m.	6	512	148%
233	5:47 p.m.)			517				
253	6:25 p.m.)	9	755	to 592	6:25 p.m.	6	612	116%
	West Line Eastbound							
212	7:57 a.m.)			708				
214	8:08 a.m.) (from Elgin)	13	1135)	to 1415	8:04 a.m.	12 (from Bensenville)	1024)	138%
218	8:30 a.m.)			671				
220	8:39 a.m.) (from Bensenville)	11	824)	to 874	8:40 a.m.	9 (from Elgin)	737)	119%

It appears from the foregoing tabulations that in every instance the proposed consolidated train has less cars and a smaller capacity than the two trains which it replaces, and in every instance, except in the case of the train replacing No. 35 and No. 131, the consolidated train does not have sufficient capacity to carry the present peak load of the two trains replaced.

[fol. 102] Two trains from Elgin now arriving in Chicago at 7:57 and 8:08 A.M. are to be abandoned entirely and replaced by a train arriving in Chicago at 8:40 A.M. or a half hour later. The schedule of consolidated trains calls for two 12-car trains and one 9-car train. There are only three out of 42 stations that can accommodate a 9-car train, and only one that can accommodate a 12-car train. No explanation has been made as to how those trains are to be loaded and unloaded.

Numberous witnesses testified that if the service were curtailed in the manner proposed, the desirability of the suburbs as a place in which to live would be very much impaired if not destroyed entirely. Lawrence Eldred, financial and markets reporter for the Associated Press, a resident of Northbrook, told how diminution of the service would affect him and his family, and others situated like them, who must depend on the Milwaukee Road to get to and from Chicago at times other than during the rush hours. He pointed out that the Milwaukee Road's service was the main reason for the suburban communities' being there. In addition, 31 representative residents from all parts of the area served by the Milwaukee Road testified as to the personal inconvenience that would result to them and to other commuters, from the proposed elimination and consolidation of trains. These witnesses included lawyers and other professional men and women; office and shop workers who were detained at times after 6:30 P.M., or whose hours do not conform to rush-hour schedules; and others who are required to go back and forth to Chicago during non-rush hour periods. A number of real estate experts also testified as to the serious effect the proposed schedule of operations would have on them, their businesses and the residents of the communities, viz: Benjamin F. Bills, Presi-

dent of Land Developers Association, who built 500 homes in Glenview and 300 homes in Northbrook, ranging in value from $15,000 to $65,000. Norton H. Engle, real estate developer and builder of 1500 to 1800 homes in Grays Lake-Lake Villa-Antioch area, ranging from $7,000 to $10,000 in value, and subdivider of an additional 1500 lots in the same vicinity. George Vihon, general manager of L. B. Harris Co., real estate developers, who built 3,500 to 4,000 homes in the Round Lake Area, ranging from $7,000 to $10,000 in value. Wesley Luehring, subdivider and real estate developer in the area of Bensenville, Wooddale, Itasca, Medinah and Roselle, who testified to the development by himself and others of 167 subdivisions. Walter J. Bogott and Harvey Branigar of the Branigar Organization, extensive real estate developers in the Bensenville area. The general conclusions as to the effect of the proposed [fol. 103] elimination of trains can best be summarized in the following quotation from the testimony of witness Benjamin F. Bills: "It would be very, very detrimental, almost disastrous * * * you simply maroon people who don't have a lot of cars and for a number of reasons don't want to drive their cars * * *. It would be an intolerable condition as far as transportation is concerned."

Petitioner's suburban service appears to be of vital importance to the suburbs. There is no other through transportation to Chicago serving any community on the North Line north of Glenview, except at Libertyville; or serving any community on the West Line west of Hermosa, except at Elgin. The importance of the suburban service to the commuters effected has increased steadily for a long period of time and is still increasing. The population and the number of passengers carried by Petitioner have been rapidly increasing.

In 1940 the population of the suburbs served by Petitioner was approximately 78,000 and the number of passengers carried 2,437,000. In 1950, ten years later, the population had increased to 119,200 and the number of passengers carried to approximately 4,569,000. The population increased about 52% and the passengers carried about 87%. In 1952 the number of passengers carried increased to about

4,789,000, an increase of 96.5% over the number of passengers carried in 1940.

Intervenors insist that the proposed consolidation of peak-hour trains is a makeshift arrangement; impracticable from the standpoint of the traveling public and also from an operating standpoint; and as in the case of the off-peak trains, involves a proposal to decrease accommodations in the face of a constantly increasing demand for service. They further insist that elimination of all off-peak service will drive patronage from the railroad and seriously affect the ability of petitioner to maintain reasonable peak hour service, and in that respect point to the testimony of witness McGee, a transportation engineer with 50 years' experience in suburban operations, who testified:

> "Mr. McGee: * * * I will say that, in examining those exhibits, the one that intrigued me most was Exhibit No. 18, which showed a healthy, regular increase in suburban passenger traffice from 1940 to 1952. The traffic doubled itself in that period, which, in my opinion, is quite remarkable.
>
> [fol. 104] "Q. Mr. McGee, does the trend of the increase in traffic indicate that a decrease in the amount of train service is called for?
>
> "A. No, it would be my opinion, and I think that of any transportation engineer, that with a healthy trend, such as exists here, you might tend to kill the goose that laid the golden egg if you took off trains. After all, the non-rush hour trains are there and they are the cheapest to operate, the most profitable revenue you can get * * *.
>
> "Q. Does a decrease in off-peak service have any effect, as a rule, on the peak service, rush-hour service?
>
> "A. Oh, yes, I don't think there can be any doubt about that. People must seek other methods of transportation and * * * you are liable to lose the traffic on your rush-hour trains."

Upon consideration of the record and being fully advised in the premises, the Commission finds:

1. that it has jurisdiction of the subject matter hereof and of the parties hereto;

2. that all recitations hereinbefore made with respect to the nature of the authority sought by Petitioner; data with respect to locomotives and passenger carrying equipment; observations and data with respect to conversion to Diesel locomotives and reduction in operating expenses; Chicago Union Station facilities; agreement by the proprietory companies with respect to apportioning expenses; data with respect to non-revenue passengers; and the data and discussion with respect to proposed discontinuance of all off-peak trains and consolidation of specified peak-hour trains should be, and are hereby, incorporated by reference in this order as findings of fact;

3. that the petition filed July 24, 1952, as amended, by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, requests an increase in fares sufficient, after authorizing abandonment of service, to cover the out-of-pocket costs of rendering the service; that the data submitted by Petitioner in support of its claimed out-of-pocket loss was based on steam operation; that the evidence discloses that [fol. 105] conversion to Diesel operation would reduce Petitioner's operating costs approximately $1,000,000 per year and that since the close of this record Petitioner has dieselized the suburban service;

4. that after dieselizing the suburban service, making proper allowances for reduction in costs for transportation of company employees and allocating Union Station costs on a true out-of-pocket basis, it appears that revenues will exceed expenses by substantial amounts;

5. that the record does not support Petitioner's contention that public convenience and necessity will permit abandonment of off-peak hour service or consolidation of specified peak-hour trains; but, on the contrary, public convenience and necessity requires the continued operation of said trains;

6. that the relief requested in the petition should be denied.

7. that all undisposed of motions made by any of the parties hereto should be, and are hereby, disposed of consistent with the conclusions reached herein;

8. that the Commission should retain jurisdiction of the subject matter and parties hereto for the purpose of entering such further order or orders as it may consider proper in the premises.

IT IS THEREFORE ORDERED that the authority sought in the petition filed July 24, 1952, as amended, by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be, and the same is hereby denied.

IT IS FURTHER ORDERED that jurisdiction of the subject matter and of the parties hereto be, and it is hereby, retained for the purpose of entering such further order or orders as the Commission may consider proper in the premises.

By order of the Commission at Chicago, Illinois, this 10th day of November, 1954.

(Signed) Frederick B. Resag
Secretary

(Seal)

(Appendices showing proposed changes in scheduled trains are omitted.)

[fol. 105b] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

NOTICE OF PLAINTIFF RE APPLICATION FOR INTERLOCUTORY INJUNCTION—filed April 13, 1956

To:

Herbert Brownell, Jr., Attorney General of United States, Washington, D. C.

Robert Tieken, United States District Attorney, Northern District of Illinois, Eastern Division, U. S. Court House, Chicago, Illinois.

Interstate Commerce Commission, Washington, D. C.

Chicago, Milwaukee St. Paul & Pacific Railroad, 888 Union Station, Chicago, Illinois.

YOU ARE NOTIFIED that on Wednesday, April 18, 1956, at the opening of Court or as soon thereafter as counsel may be heard, we shall appear before Hon. Philip L. Sullivan, Judge of said Court, or before such judge as may be sitting in his place, in the United States Court House, Chicago, Illinois, and make application for an interlocutory injunction as prayed in the complaint in the above case, and move that:

[fol. 105c] 1. The Judge of this Court to whom the complaint is presented, shall notify the Chief Judge of this circuit of the filing of the complaint;

2. The Chief Judge thereupon shall designate three judges, at least one of whom shall be a circuit judge, to hear and decide this suit;

3. That the Court grant instanter a temporary restraining order:

(a) Enjoining the Interstate Commerce Commission from enforcing its said report and orders dated November 21, 1955 and March 2, 1956, in its Docket No. 31742;

(b) Enjoining the Milwaukee Road from putting into effect the fares prescribed in said report and orders;

4. That the motion for temporary injunction, as prayed in the complaint, be set for hearing before the designated three judges on a day to be fixed by the Court, and that upon said hearing the Court shall issue a temporary injunction, effective until further order of Court;

(a) Enjoining the Interstate Commerce Commission from enforcing said report and orders;

(b) Enjoining the Milwaukee Road from putting into effect the fares prescribed in said report and orders of the Interstate Commerce Commission;

(c) Enjoining the Milwaukee Road from putting into effect any fares in its Illinois intrastate suburban service other than those now in effect;

5. That this case be set for final hearing on a day to be fixed by the Court.

Dated: April 13, 1956.

/s/ Latham Castle, Attorney General of Illinois.

/s/ Harry R. Begley, Spec. Asst. Attorney General, Attorneys for Plaintiffs The State of Illinois and Illinois Commerce Commission.

/s/ Tenney, Sherman, Bentley & Guthrie, Attorneys for Plaintiff Milwaukee Road Commuters' Association.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 107] SECRETARY'S CERTIFICATE (omitted in printing)

[fol. 108]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31742

In the Matter of:

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD

Docket No. 11703

INTRASTATE RATES WITHIN THE STATE OF ILLINOIS

Docket No. 26550

PASSENGER FARES AND SURCHARGES

TRANSCRIPT OF HEARING

Hearing Room, 19th Floor,
160 N. LaSalle Street
Chicago, Illinois,
Thursday, April 14, 1955

Met, pursuant to notice, at 10:00 o'clock, a.m.
Met, Pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

BURTON FULLER, Examiner.

APPEARANCES:

R. K. Merrill, 888 Union Station, Chicago, Illinois, appearing for Chicago, Milwaukee, St. Paul & Pacific Railroad, Respondent.

H. R. Begley and William J. Gibbons, 160 N. LaSalle Street, Chicago, Illinois, appearing for the Illinois Commerce Commission.

E. B. Wilkenson, 231 S. LaSalle Street, Chicago, Illinois, appearing for Northern Indiana Coal Traffic Association, Intervenor in support of Respondent.

J. E. Hart, 105 W. Monroe Street, Chicago, Illinois, appearing for Wisconsin Paper & Pulp Manufacturers Traffic Association, Intervenor in support of Respondent.

[fol. 109] Floyd L. Thomas, 1003 Tenny Building, Madison, Wisconsin, appearing for Wisconsin Canners Association, Intervenor in support of Respondent.

S. Ashley Guthrie and Francis D. Fisher, 120 South La Salle Street, Chicago 3, Illinois, appearing for Milwaukee Road Commuters Association, Protestant.

[fol. 111] PROCEEDINGS

Exam. Fuller: Come to order, gentlemen.

The Interstate Commerce Commission has assigned for hearing at this time and place, Docket No. 31742, Chicago Intrastate Suburban Fares of the Milwaukee Railroad No. 11703 in the matter of Intrastate Rates within the State of Illinois, and No. 26550, Passenger Fares and Surcharges.

Who appears for respondent?

Mr. Merrill: R. K. Merrill, 888 Union Station, Chicago 6, Illinois. I am an attorney admitted to practice before the Commission.

Exam. Fuller: Who appears for the Illinois Commerce Commission?

Mr. Begley: H. R. Begley and William J. Gibbons, 16 North LaSalle Street, 19th Floor, Chicago, Illinois.

Exam. Fuller: Who appears for intervenors in behalf of the respondent?

Mr. Wilkenson: E. B. Wilkenson, 231 South LaSalle Street, Chicago, Illinois, lawyer admitted to practice before the Interstate Commerce Commission, and Harold B. Scott, 632 Cherry Street, Terre Haute, Indiana, Traffic Manager and full time employee of Northern Indiana Coal Traffic Association.

Exam. Fuller: Who appears for Wisconsin Paper and Pulp Manufacturers Traffic Association?

Mr. Hart: J. E. Hart, 105 West Monroe Street, Chicago, Illinois, appearing for the railroad.

[fol. 112] Exam. Fuller: Who appears for Milwaukee Road Commuters Association, Profestant?

Mr. Guthrie: S. Ashley Guthrie, lawyer admitted to practice before the Interstate Commerce Commission, and I put down also my associate, Francis D. Fisher, who is not admitted but I would like to have associated particularly in this case, in the firm of Tenney, Sherman and Guthrie. He is a member of the Illinois Bar. He is not here this minute, but he will be.

Exam. Fuller: The proposal of the railroad is set forth in the order of the Commission dated March 4, 1955, and I understand that so far as No. 11703 is concerned, that that refers only to certain intrastate one way and round trip fares and are covered by an outstanding order.

In No. 26550, that refers to certain interstate one-way and round trip fares that are covered by maximum rate order. I do not believe it is necessary to read all the details set forth in the order. As far as Section 13 is concerned, it is—the issue is two-fold, one, whether there is any personal locality discrimination, and second, whether there is any so-called revenue discrimination between intra and interstate commerce.

The respondent may proceed.

Mr. Merrill: Call Mr. O'Toole.

J. J. O'Toole was sworn and testified as follows:

Mr. Merrill: Before proceeding with Mr. O'Toole's testi- [fol. 113] mony, may we have these exhibits marked for identification, please? As Exhibit 1, the exhibit which is a map entitled Chicago Surburban Territory. As Exhibit No. 2, a one page statement entitled Trackage Used in Suburban Service, December 31, 1954.

Exam. Fuller: They may be so marked.

(Respondent's Exhibits Nos. 1 and 2, Witness O'Toole, were marked for identification.)

Mr. Merrill: As Exhibit No. 3, a two page statement, entitled Identity and Particulars of Trains Presently Operated in Chicago Surburban Service, North Line. As Exhibit No. 4, a one page exhibit with a time table en-

titled, Suburban Service, North, attached to the one sheet.

As Exhibit No. 5, a one sheet exhibit with a time table attached entitled, Surburban Service, West.

As Exhibit No. 6, a five page statement entitled, Milwaukee Division, and as Exhibit No. 7, a four page exhibit entitled, D&I Division.

Exam. Fuller: The exhibit will be marked 3 to 7, inclusive.

(Respondent's Exhibits, Nos. 3 to 7, Witness O'Toole, were marked for identification.)

Direct examination.

By Mr. Merrill:

Q. Will you state your name and address?

A. J. J. O'Toole, 862 Union Station, Chicago, Illinois, General Manager of Lines East of the Milwaukee Railroad.

Q. What do you mean by lines East?

A. I have jurisdiction over all lines east of the Missouri [fol. 114] River including the Black Hills line, west of the Missouri River.

Q. Will you state briefly your experience with the Milwaukee Railroad?

A. I have been a switchtender, switchman, yard clerk, general officer clerk, train master, assistant superintendent, superintendent, general superintendent, assistant general manager and general manager.

Q. Have you any jurisdiction over the suburban operations of the Milwaukee Railroad?

A. That's right, general jurisdiction.

Q. Would you state briefly over what period—strike that. Would you state over what matters you would have jurisdiction in that connection?

A. Assignment of locomotives, assignment of cars, schedule of performance and approving the actions of the suburban committee.

Q. Have you any duties in connection with determining economical ways of operating the railroad generally?

A. That is correct.

Q. Would you state what states are served by the Milwaukee Railroad?

A. Indiana, Illinois, Wisconsin, Michigan, Minnesota, South Dakota, North Dakota, Montana, Idaho, Washington, Iowa, Nebraska and Missouri, 13 in all.

Q. Does the railroad render freight service over the lines through the various states that you have named?

[fol. 115] A. It does.

Q. Referring you to Exhibit No. 1, for identification, a map of the Chicago Surburban territory, will you briefly explain what the Chicago Surburban Territory consists of as served by the Milwaukee Railroad?

A. On the map, a line running forth which I will call a north line, extends from Chicago through Round Lake and Fox Lake, terminating at Walworth. The line running west extends from Pacific Junction, which is approximately five and five-tenths miles west of the Union Station to Elgin.

Q. Referring to Exhibit No. 2, does that set forth the trackage used in suburban service?

A. It does.

Q. Does it show the mileage and the ownership thereof?

A. It does.

Q. Will you please refer to line 1, of the exhibit entitled Chicago Union Station Company, Union Station—Canal Street. How many tracks are used which belong to the Chicago Union Station Company?

A. You mean main tracks or——

Q. How many tracks are used in the station in surbuban service?

A. Eight.

Q. And then to the end of the ownership which is at Canal Street, approximately how many tracks are involved other than the eight station tracks?

A. Well, there are four tracks to Lake Street, and two [fol. 116] tracks from Lake Street to Canal Street, four tracks would move, would mor- or less be considered a float of the yard, but for two tracks you might call it 62-hundre-ths of a mile.

Q. Of the trackage shown on Exhibit 2, how much is elevated trackage, Mr. O'Toole?

A. 9.11 miles.

Q. Between what points does the elevated trackage extend?

A. From Racine Avenue to Forest Glen and from Pacific Junction to Craigen.

Q. Racine Avenue does not appear on the map. Could you describe where it would occur, if it were marked thereon?

A. It is approximately midway between Canal Street and the Union Station, or between the Union Station and Western Avenue.

Q. Does the railroad provide passenger station facilities at the various communities which it serves in suburban service?

A. Yes, sir.

Q. How many heated and lighted passenger stations are furnished for the use of suburban passengers?

A. Twenty-three on the North Line and 14 on the West Line, and on the West Line it does not include the Chicago Union Station or Western Avenue.

Q. And in addition to the heated and lighted stations, does the railroad provide shelters for commuters?

A. It does.

Q. How many shelters are provided?

[fol. 117] A. Three on the North Line and six on the West Line.

Q. Of the stations that you have named, Mr. O'Toole, how many are agency stations?

A. Seventeen on the North Line and 11 on the West Line.

Q. Are the station facilities in some instances used jointly with through passenger or with the freight service?

A. That's right.

Q. So, let us take out first the exclusively suburban station facilities? How many are there?

A. All of the stations on the North and East Line are joint freight and passenger stations except the Chicago Union Station Company.

Q. How many interlocking plants are involved in the suburban system of the railroad?

A. One in the Chicago Union Station, there are five exclusive Milwaukee plants and nine plants involving crossings and junctions with other railroads, 15 in all.

Q. What type of locomotives are used in the Milwaukee Suburban Service?

A. There are 12, 2,000 horsepower cab diesels, five 1750 horsepower switchers, and one 1500 horsepower road switcher.

Mr. Guthrie: Excuse me, would you mind repeating that?

The Witness: 12, 2,000 horsepower road engines, five 1750 horsepower road switchers, and one 1500 horsepower road switcher.

Mr. Guthrie: All diesels?

The Witness: That's right.

[fol. 118] Exam. Fuller: I did not quite understand what you said about the stations, whether they were joint. You said the North Line they were all joint freight and passenger.

The Witness: That is right.

Exam. Fuller: How about on the West Line?

The Witness: The same thing, except the Chicago Union Station.

By Mr. Merrill:

Q. Is the suburban service 100 per cent dieselized?

A. It is.

Q. When did the dieselization take place?

A. Last August.

Q. Was that a gradual process, Mr. O'Toole?

A. It was.

Q. With respect to the diesel locomotives named, are they exclusively assigned to suburban service?

A. Prior to February 15, they were worked in a pool with the through service, through train service. Subsequent to February 15, we assigned locomotives exclusively to suburban service and draw on the road pool only for relief engines when a suburban engine is held for work.

Q. Please refer to exhibit No. 3, and state what that exhibit purports to show?

A. It shows the schedules of trains, the day of the week that they operate between what points, the time of the departure from the initial station, the time of arrival at final [fol. 119] terminal, and the coaches or cars that are assigned to the train.

Q. Does that equipment haul both revenue and non-revenue passengers?

A. It does.

Q. Were the nonrevenue passengers to be eliminated would there be any savings in the amount of equipment required?

A. I think we could save two cars in each direction on the West Line, and one car in each direction on the North Line without increasing the revenue passengers standing.

Q. Is that statement based upon any particular investigation which you have made?

A. Yes, I had a check made of the deadheads or non-revenue passengers carried on the on peak trains, and based my conclusion on the number of these deadheads that were carried on the on peak trains. Right as to that there could be no cars eliminiated on the off peak trains.

Q. What facilities does the railroad provide for the maintenance and repair of its locomotives and cars?

A. At Western Avenue, which is our repair point, for both cars and locomotives, we provide a rather extensive coach yard that is equipped with drop pits, a wheel turning device on which the wheels of cars can be turned without dismounting the wheels or taking the trucks from out from under the cars, the wheel turning machine, a car washer, store facilities, stock of repair parts for the repairs of both through and suburban equipment.

We have a diesel house that is maintained and since February 15,——

[fol. 120] Mr. Guthrie: This is Western Avenue?

The Witness: Yes. Since February 15, we assigned ten stalls in the round house that was formerly used for the maintenance of steam locomotives for the maintenance of suburban diesels and switch engines that work in the Western Avenue territory.

The round house facilities consist of inspection pits, turn tables, a washer for washing the exterior of the suburban engines, a truck shop adjoining the round house in adjacent stalls, and the usual watering, sanding and fueling facilities.

The suburban and through locomotives that require wheel turning are taken to the coach yard and the wheels

are turned on the wheel turning machine at that point without dismounting them.

Q. Have you facilities for repair, maintenance of equipment at any other points than Western Avenue?

A. On the opposite side of the coach yard we use two tracks in the freight yard for maintenance of four suburban trains. The outside points are Deerfield, Fox Lake, Walworth and Elgin. There are no repairs performed at any of these places except in case of emergency. If an engineer, for example, operating from Chicago to Elgin reports some substantial defect on a locomotive, we would send a machinist and electrician to take care of it before the engine was dispatched the following morning.

I might also state that we tie one train up at Bensonville and house one suburban diesel locomotive at Bensonville. [fol. 121] Q. What is the practice of the railroad with respect to cleaning of the car equipment?

A. At Western Avenue, the exterior of the cars where the temperature is above 28 degrees Fahrenheit, get washed twice each week by running the cars through the car washer. The interiors of the cars are mopped daily, window sills wiped, composition seats wiped, plush seats are vacuumed twice each week and the interior of the cars, including the walls are washed with soap and water twice each year.

Q. Are there any facilities or car cleaning operations performed at the outlying points?

A. The only cleaning done at the outlying points is to pick up the newspapers, sweep out the cars and dust the window sills and seats. The windows are not washed at the outlying points.

Q. Is that a nigh-ly operation at these outlying points?

A. That is correct.

Q. And those points are the same ones you mentioned before, Deerfield, Fox Lake and Walworth and Elgin. Is that correct?

A. And Bensonville.

Q. Now, referring you to Exhibits 4 and 5, do those show the train schedules on the North Line and West Line respectively, of the Milwaukee Railroad?

A. They do.

Q. How many trains a day do those exhibits show are operated by the railroad on each line?

[fol. 122] A. From Monday to Friday, on the North Line there are three trains in each direction from Chicago to Deerfield, one train in each direction, Chicago to Walworth, nine trains in each direction, Chicago to Fox Lake.

On Saturday there is one train in each direction, Chicago to Walworth, seven trains in each direction, Chicago to Fox Lake, and on Sunday, there is one train in each direction, Chicago to Walworth, and four in each direction between Chicago and Fox Lake.

On the West Line, Monday through Friday, there is one train in each direction, Chicago to Bensenville, 13 in each direction, Chicago to Elgin.

On Saturday, one train in each direction, Chicago to Bensenville, ten trains in each direction, Chicago to Elgin. On Sundays and holidays, five trains in each direction between Chicago and Elgin.

Q. Are those trains you have named strictly suburban trains?

A. That's right.

Q. And they do not include any through trains that may make stops within suburban territory.

A. Does not.

Q. Now, if you will please refer to Exhibit No. 6 and 7. Will you please explain what they purport to show?

A. Exhibit No. 6, shows the crew consist and the assignment of each conductor, collector, brakeman, flag man, engineer, and fireman, and the days of the week that they [fol. 123] are so assigned. It shows the current wage rate per 100 miles, in miles paid per month, and the monthly wages on assignment.

Q. That exhibit is entitled Milwaukee Division. Is that the same as the North Line as you have described in your testimony?

A. That's right, sir.

Exhibit No. 7, entitled D&I Division shows the assignment of the crews on the West Line. That is the trains to which they are assigned from Monday through Friday, also on Saturdays and Sundays, miles paid on the assignment

and the monthly wages computed on the basis of the miles paid.

Mr. Guthrie: Excuse, me. Off the record.
Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. What does D&I mean?
The Witness: Dubuque and Illinois.
Exam. Fuller: Why is it you do not run any suburban trains north of Roundout toward Milwaukee?
The Witness: For some reason that never developed into a suburban territory.
Exam. Fuller: I am not clear on that.
The Witness: That just has not developed.
Mr. Guthrie: I am not cross examining you, but I want to get it clear. You do not run suburban trains to Walworth?
The Witness: Oh, yes.
Exam. Fuller: I said north of Roundout toward Milwaukee.
[fol. 124] Mr. Guthrie: Oh, yes.

By Mr. Merrill:

Q. Mr. O'Toole, how many of each type of employee, of the conductors, brakemen, flagmen and other train men and the enginemen are required in the suburban service?
A. On the North Line, Monday through Friday, ten conductors, eight breakmen, five flagmen, five collectors, one baggageman, 13 engineers, and 13 firemen. On Saturdays, eight conductors, six brakemen, two flagmen, one collector, eight engineers, and eight firemen. On Sundays, six conductors, five brakemen, one flagman, five engineers and five firemen.

I might say that on Sundays you will note that we have only five engineers and six conductors, but that is due to the fact that we change the conductors off at Fox Lake on Sunday to reduce overtime; because we have to pay the conductors' guarantee anyway.

Then joint and through employees partially assigned to suburban service, Monday through Friday, two conductors,

two brakemen, and one collector. On Saturday, two collectors, and on Sundays, nothing.

Q. All right, now the West Line.

A. On the West Line Monday through Friday, you have nine conductors, nine brakemen, five collectors, 13 engineers, and 13 firemen. On Saturday, nine conductors, nine brakemen, five collectors, ten engineers, and ten firemen. On Sundays, five conductors, five brakemen, five engineers and five firemen. There are no joint and through [fol. 125] mixed service on the West Line.

Exam. Fuller: What do you mean by mixed service?

The Witness: Well, we start a man out of Deerfield in the morning. He will come into Chicago on a suburban train. Then he will make a trip to Milwaukee on a through train, then come back to Chicago on another through train and then go out in the evening to Deerfield and terminate his day.

Mr. Guthrie: Will you read his last statement prior to this one?

(Answer read.)

By Mr. Merrill:

Q. By that statement you mean there is no employee on the west line that are assinged to both through and suburban service. Is that right?

A. That's right.

Q. Will you explain how the suburban equipment is handled between the Chicago and Union Station—the Chicago Union Station and the Western Avenue coach yards after a train has arrived at Chicago Union Station inbound, or before it departs the Chicago Union Station outbound?

A. Generally speaking, the road engine crew and the senior brakeman on the assignment, backs the inbound suburban train from the Union Depot to the coach yard. In the reverse direction, the senior brakeman and the engineer and the fireman backs the train from the coach yard to the depot. There are exceptions however, as some brakemen double to another outbound train in depot and

[fol. 126] in those cases yard pilots are used to back the train between the coach yard and the depot. In the afternoon,——

Q. Excuse me. Do you mean from the depot to the coach yard?

A. Both directions.

Q. All right.

A. In the afternoon to avoid congestion, we back five trains from Western Avenue coach yard to the depot, oh, anywhere from 1:30 to 3:00 p.m. and spot them into the depot to keep the number of trains from Western Avenue to the depot at a minimum figure during the rush hours.

Q. Approximately how many miles is it from the Chicago Union Station and Western Avenue?

A. Oh, about three-tenths miles to the coach yard.

Q. How many pilots are utilized in handling suburban equipment between the depot and Western Avenue?

A. There are no pilots that are used exclusively to handle suburban equipment. They are worked in a pool and handle both through and suburban equipment. There are 12 pilots worked from Monday to Saturday inclusive, and seven pilots on Sunday.

Q. All right, are the locomotives backed in every instance by the road engine crew, in and out of the Chicago Union Station?

A. They are with one or two exceptions where we turn the engine in the depot. In other words, it would come into the Union Station and a switch engine would lift out the train, and that would immediately be put on to an outbound train. If the engine crew was assigned to that out-[fol. 127] bound train it would go out on it, otherwise they would be deadheaded from the Union Depot to Western Avenue.

Q. So with one or two exceptions, the road engine crew which brings in the suburban train will back it out to the coach yard.

A. That is correct.

Q. And on the return trip will back the engine into the Union Station.

A. That's right.

Q. Is there any particular problem of schedule coordination between the suburban service and the through passenger and freight service, sir?

A. Yes, we have two tracks from Tower 820 to Roundout. Tower 820 is just north of Techny shown on the print, and in that territory we have scheduled 26 passenger, mail and express trains in each direction, and seven scheduled freight trains. The distance from 820 to Roundout is about 12 miles. Because of the slower moving freight trains, we have found that we cannot schedule freight trains between 820 and Roundout during the peak passenger movement, which is in the morning and in the evening hours. So that we run our freight trains either ahead or behind the rush.

On the West Line it is 19 miles from Bensenville to Elgin. There are 15 regularly scheduled passenger trains in each direction and five regular freight trains in each direction. In that territory we also refrain from operating freight [fol. 128] trains on the two main tracks during the peak hours of the day.

Now, those freight trains that I mentioned are regularly scheduled freight trains. You may have additional trains from, oh, say starting on Thursday and ending on Saturday, may run from one to three so-called extras in each direction, depending upon the season of the year and the volume of the business.

Exam. Fuller: What do you call the peak hours?

The Witness: Well, in the territory from 820 to Roundout westbound, I would say from, oh, roughly 5:15 p.m. to about 6:45 p.m., and in the morning from about 6:00 a.m. to 9:00 a.m.

Q. In referring to the West Line you mentioned 15 passenger trains that would include two through passenger trains, would it not?

A. That's right.

Q. Would you compare the utilization of the railroads suburban equipment with the utilization which it receives from its through passenger equipment?

Exam. Fuller: I think that is a good place to have a recess.

(Short recess.)

Exam. Fuller: On the record.

Mr. Merrill: Mr. Examiner, Mr. Thomas here wants to enter an appearance.

Mr. Thomas: Floyd L. Thomas, intervening representing Wisconsin Canners Association, 103 Tenny Building, Madison, Wisconsin.

Exam. Fuller: You are intervening in support of the [fol. 129] respondent, Milwaukee Railroad?

Mr. Thomas: Yes, sir.

Exam. Fuller: Proceed, Mr. Merrill?.

By Mr. Merrill:

Q. Mr. O'Toole, will you describe the peak hour demand on the equipment of the railroad used in this suburban service?

A. From 3:40 p.m. to 6:47 p.m. it requires 58 cars on the North Line, and 47 cars on the West Line for a total of 105 to man the service. To haul these cars it requires nine engines on the North Line, and eight engines on the West Line, or a total of 17.

Q. How many cars and locomotives all together are used in the suburban service?

A. 116 coaches and 11 passenger and baggage cars.

Q. How many, approximately, or rather how many locomotives are used all together?

A. 18.

Q. Is there a relatively limited use of the suburban equipment as compared to the equipment used in through passenger service?

A. That is right. As an example, based on a 26 day month, a coach between Chicago and Elgin will average 2,073 miles, Chicago and Deerfield, 1425 miles, Chicago to Fox Lake, 2739 miles, Chicago to Walworth, 3986 miles.

Q. Over what period of time?

A. That is a 26 day month, compared to a coach in through service, as an example, between Chicago and Omaha on a 26 day month, the car will run 12,844 miles, [fol. 130] Chicago and Sioux Falls 15,860 miles, Chicago and Minneapolis 11,076 miles, Chicago and Calumet,

Michigan 11,180 miles. Between Chicago and Seattle it would be much greater but I don't have the figure.

Q. I believe there may have been some misunderstanding in your earlier testimony concerning the facilities exclusively used in surbuban service. I am speaking of the passenger stations. I understood your testimony to be that all of the suburban passenger stations are also used in through passenger or freight service jointly with the suburban. Is that a correct statement?

A. No, I misunderstood the question.

Q. Would you please state how many of the stations used in the suburban service are exclusively used for that purpose?

A. Eight on the North Line and nine on the West Line.

Q. How many suburban passenger stations are used jointly, either with the through passenger service or with the freight service?

A. Seventeen on the North Line and 11 on the West Line.

Q. On the North Line you are including Chicago Union Station and Western Avenue. Is that correct?

A. That's right.

Q. And on the West Line you have not included them in that count.

A. That's right.

Q. Are the documents which have been marked for identification as exhibits numbers 1 through 7, true, correct and accurate to the best of your knowledge and belief? [fol. 131] A. They are.

Mr. Merrill: That is all we have on direct testimony, Mr. Fuller. We would like to offer into evidence, Respondent's Exhibits 1 through 7, inclusive.

Mr. Fisher: We would like to reserve cross examination and suggest admission of the exhibits be postponed for ruling until after that.

Mr. Merrill: Mr. O'Toole is available for cross examination.

Mr. Fisher: I would like to defer cross examination.

Exam. Fuller: The witness is temporarily excused.

(Witness temporarily excused.)

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. Respondent will now yield to the intervenors for a few minutes.

J. E. HART was sworn and testified as follows:

Direct examination.

The Witness: My name is J. E. Hart and I am the Secretary and General Traffic Manager of the Wisconsin Paper & Pulp Manufacturers' Traffic Association, a non-profit organization of manufacturers of paper, fibreboard, pulp and products thereof, with mills located at various points in the state of Wisconsin and at Munising, Michigan. My office is located at 105 West Monroe Street, Chicago, Illinois. [fol. 132] I have a statement I wish to make on behalf of the Association in support of the request of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Milwaukee Road, for permission to make certain increases in their passenger fares within the Chicago suburban area.

I have had more than 25 years experience in rail transportation work. I was employed by the Illinois Freight Association in various capacities from 1926 until March, 1944. The next three years I was Traffic Manager for the War Hemp Industries, Inc., an agency for the Commodity Credit Corporation, and operating 42 mills in the Middlewest producing domestic hemp fibre.

I was appointed Assistant Traffic Manager of the Wisconsin Paper & Pulp Manufacturers' Traffic Association effective April 1, 1947, and served in that capacity until April 1, 1954, at which time I was appointed Secretary and General Traffic Manager. I am familiar with the issues involved in this proceeding.

The purpose of the Wisconsin Papers & Pulp Manufacturers' Traffic Association, which was organized in 1907, hereinafter referred to as the Association, is to promote the preservation of just and reasonable rates, rules, and

regulations for the transportation of materials, supplies and products to and from the plants of the members of the Association. At the present time the Association represents 21 separate companies operating plants at 26 different cities and having an annual production capacity of approximately 620,000 tons of paper, paperboard, and re- [fol. 133] lated products, and an inbound tonnage of over two million tons.

The Milwaukee Road serves ten of our mills through direct connection and operates as an intermediate carrier on traffic to and from a number of our other mills. The members of our association, therefore, use the Milwaukee Road in connection with the transportation of a substantial part of their inbound raw materials and their outbound products.

We are vitally concerned with our transportation costs which are in excess of fifty million dollars a year. Beginning with Ex Parte 123 and including Ex Parte 162, 166, 168 and 175, our freight rates have been increased approximately 80 per cent, and these increases have been applicable to shipments moving via Milwaukee Road, to the extent it participates in the transportation of our inbound material and our outbound products.

Exam. Fuller: You would not have any idea how much the Milwaukee shares in that fifty million dollars?

The Witness: No, that would be rather difficult because we ship to the four corners of the country. I could not estimate how much they retain.

Exam. Fuller: All right.

The Witness: I might say this, that as a reasonable estimate that the Milwaukee would probably handle something better than 25 per cent of our tonnage, but I could not very well relate it to dollars.

Exam. Fuller: Very well.

[fol. 134] During the period our freight rates were being increased, the Interstate Commerce Commission observed that the annual passenger service deficit in net railway operating income of Class I Railroads has exceeded 500 million dollars (Increased freight rates, 1951, 281 ICC 557, 589). As a representative of an industry that pays a substantial freight bill each year, I believe that if the passen-

ger deficits were reduced, it would lessen the demand for increases in freight rates. As shippers of freight, we are interested in seeing that each segment of railroad service pay its own way, and we believe it is unreasonable to expect a service at a charge less than out-of-pocket costs.

Speaking specifically to this proceeding, the Milwaukee Road has alleged and it is expected that it will show that its passenger operations within the Chicago suburban area result in heavy losses in revenue. This means that this service is being supported by other operations of the Milwaukee Road and as shippers of freight we must contribute to the support of this service.

Exam. Fuller: You have made no independent study of the cost of this suburban service, have you?

The Witness: No, sir.

Exam. Fuller: So your presentation position is based on the premise that the Milwaukee Road is going to show that in this proceeding.

[fol. 135] The Witness: Yes, sir.

Exam. Fuller: Very well.

The Witness: We do not believe it is reasonable to expect shippers of freight to support the Chicago suburban passenger service. I repeat, I do not believe any segment of railroad service should be operated at less than out of pocket costs.

I am in agreement with the freight shipper interveners in I&S Docket 5734, Commutation Fares, Eastern Railroads, 278 ICC 491, 499, that the failure of the commutation and other passenger service to make a fair contribution to increased expenses can only result in one or more of three eventualities, namely, (1), the freight service will be required to make more than a fair contribution to such increased expenses, (2), the freight service will be impaired, or (3), the freight shippers will resort increasingly to other forms of transportation.

We know that the existing high level of freight rates has resulted in the diversion of a substantial amount of traffic from the railroads to other forms of transportation.

It is, therefore, in the interest of the Milwaukee Road and the general public that the Milwaukee Road be per-

mitted to adjust its passenger fares, where necessary, so as to at least meet out of pocket costs.

We respectfully urge that consideration be given to these factors in the disposition of this proceeding. That completes my statement.

[fol. 136] Exam. Fuller: Any questions?

Mr. Fisher: I have just a few.

Cross examination.

By Mr. Fisher:

Q. Mr. Hart, you know the relative amount of revenue on the Milwaukee Road from their total freight business, as compared with their revenue from their suburban operations involved in this proceeding?

A. No, sir, I do not.

Q. Do you have any idea how the increase in rates that is asked for here, if granted, might effect shipping rates?

A. Well, I don't believe that it would effect them to any great extent.

Q. Do you have any idea?

A. No, sir.

Mr. Fisher: No other questions.

Mr. Gibbons: I have one question, sir.

By Mr. Gibbons:

Q. On page 3 of your testimony you have indicated that freight rates have been increased by approximately 80 per cent beginning with Ex Parte 123 and including Ex Parte 162, 166, 168 and 175. Could you state what period of time that embraces?

A. Well, 123 was March, 1938, and these other increases have come since that time.

Q. All right.

Exam. Fuller: Any other questions?

[fol. 137] Mr. Fisher: That is all.

Exam. Fuller: All right, that is all. You are excused.

(Witness excused.)

Mr. Gibbons: Mr. Examiner, will he be available at another later date for further cross examination?

Exam. Fuller: He, he has been excused. What is the next intervenor?

Mr. Wilkenson: Mr. Scott will be next.

HAROLD V. SCOTT was sworn and testified as follows:

Direct examination.

By Mr. Wilkenson:

Q. Will you please give your name and address?

A. Harold V. Scott. My address is 632 Cherry Street, Terre Haute, Indiana. I am Traffic Manager of the Northern Indiana Coal Traffic Association. My duties include the handling of all traffic and transportation matters involving rates on coal from the Brazil-Clinton and Linton-Sullivan origin groups in Indiana.

Q. Will you please give a brief history of your experience?

A. Since 1952 I have been Traffic Manager of the Northern Indiana Coal Traffic Association handling the freight rates on bituminous coal from the Brazil-Clinton and Linton-Sullivan origin groups in Indiana, in which origin groups are located the mines of the members of that Association. From 1940 to 1952, I was Traffic Manager of the Coal Trade Association of Indiana handling freight [fol. 138] rates on bituminous coal from all Indiana mines. The Coal Trade Association of Indiana was a voluntary association of all coal producing companies which owned and operated rail mines in the State of Indiana. Prior to 1940, I was employed in the Traffic Department of the Chicago, Milwaukee, St. Paul Railroad.

Q. For whom are you appearing?

A. I am appearing in behalf of the members of the Northern Indiana Coal Traffic Association. This is a voluntary organization of corporations, firms and individuals that own and operate bituminous coal mines in the Brazil-Clinton and Linton-Sullivan origin groups of Indiana. In

1954, the members of the Association produced approximately 4,500,000 tons of bituminous coal.

Q. Please name the coal producing companies which are members of your Association.

A. They are, Linton-Summit Coal Company, the Maumee Collieries Company, Sherwood-Templeton Coal Company, Snow Hill Coal Corporation, Templeton Coal Company and Viking Coal Corporation.

Q. Which of these companies have mines served by the Milwaukee Railroad?

A. The Linton-Summit Coal Company, the Maumee Collieries Company, Sherwood-Templeton Coal Company, Snow Hill Coal Corporation, and Templeton Coal Company. The Milwaukee Railroad serves ten of their mines, four of which are at the present time temporarily closed. In addition, there are two other coal producing companies [fol. 139] which are not members of the Northern Indiana Coal Traffic Association but which operate mines in Indiana served by the Milwaukee Railroad. They are the Fairview Collieries Corporation operating the Minnehaha Mines and the Ayrshire Collieries Corporation operating the Sunspot Mine.

Q. What is the annual production of the mines served by the Milwaukee Railroad?

A. In 1954 the annual production of the mines served by the Milwaukee Railroad was approximately 2,900,000 tons, but some of those mines are joint mines served by one other railroad. However, the commercial coal shipped via the Milwaukee Road from all of the mines in Indiana served by the Milwaukee Railroad in the year 1954, was approximately 1,926,595 tons.

Q. What is the position of the members of the Northern Indiana Coal Traffic Association in this proceeding?

A. We are appearing in support of the petitioning railroad. It is the position of the Northern Indiana Coal Traffic Association that each class of rail service should pay its own way and that the deficit revenue operations of the railroads such as the revenue deficiencies incurred in the performance of passenger service, should not be subsidized through the payment of unreasonable freight rates and charges on bituminous coal.

Q. Why are the passenger deficits of the Milwaukee Railroad of interest to the Indiana *coal* producers?

A. Because the passenger deficits have a direct effect [fol. 140] upon the freight rates of the Milwaukee Railroad upon the coal shipped by the Indiana Coal producers with mines located on the Milwaukee Railroad. The Milwaukee Railroad annual report, Schedule 300 of the Interstate Commerce Commission Annual Report, Form A, for the year ending December 31, 1954, shows a passenger deficiency or out of pocket loss of $6,300,174 and fully distributed loss of $17,723,367.

The Supreme Court of the United States has held that the railroads can take into consideration in fixing freight rates the deficits in their passenger operations. This was the case involving increases in the Florida intrastate rates, King verses United States, 344 U. S. 254.

Here it is alleged, and presumably will be shown, that the Milwaukee Railroad has a Chicago suburban area passenger out of pocket loss of $700,000 and a fully distributed loss of $1,600,000.

Exam. Fuller: Did you get those figures out of the petition, sir?

The Witness: As to—yes, sir, that's right, the petition.

Exam. Fuller: All right.

The Witness: The failure of this passenger service to make its fair contribution to the Railroad's increased expenses, if the evidence shows that it does not, materially affects the rates on bituminous coal which originates at mines in Indiana on the Milwaukee Railroad, as well as the rates on coal originating on other railroads in Indiana in which transportation the Milwaukee Railroad participates.

[fol. 141] We are participating in this proceeding in support of the Milwaukee Railroad because the bituminous coal shippers have in the past and are now suffering from rates on coal that are so high that our markets have been sever-ly curtailed in our competition with natural gas and oil. In addition, the coal on the Milwaukee Railroad is further seriously affected by the competition of coal from other fields, moving via water routes or via rail-water

routes, which water transportation methods are not available to coal shippers on the Milwaukee Railroad.

Let me illustrate this. Since July 1, 1946 the freight rates on coal have been substantially increased by the Ex Parte Nos. 162, 166, 168 and 175 General Increase. The average freight rate on bituminous coal in 1946 was $2.20 per ton, while in 1953 it was $3.33, an increase of $1.13.

In 1946 there were shipped from the Milwaukee Railroad mines in Indiana via the Milwaukee Railroad, 3,268,517 tons, while in 1953 there were shipped only 1,987,251 tons, a decrease of 1,281,266 tons. This decline in coal shipments has been largely due to the increase in freight rates which has resulted in a loss of coal markets to natural gas, to oil and to water-borne coal.

The passenger deficit in the net railway operating income of all Class I Railroads for 1953 was $705,000,000. These figures are taken from the preliminary abstracts of Railway Statistics of the Interstate Commerce Commission. [fol. 142] In 1953, the total freight revenues of the railroads were 9.2 billion dollars and the passenger deficit was $705,000,000. It follows that had there been no passenger deficit the freight revenues could have been lower by $705,000,000 and still yield the same rate of return.

Obviously, if the benefits from the elimination of this passenger revenue deficit had been distributed among the users of rail freight services who contributed to this burden, very substantial reductions in the freight rates on bituminous coal would have been possible.

When freight, including bituminous coal, is required to pay higher rates in order to absorb the losses of passenger service and in order that the railroads might earn a return upon their investment, including passenger equipment and stations, it is our position that the passenger rates should be increased so as to bear a greater share of the cost of that service, and thereby take that burden off the freight service, including transportation of bituminous coal.

By Mr. Wilkenson:

Q. And it is your position here, Mr. Scott, that if the intrastate passenger fares in the Chicago area of the Mil-

waukee Road are not paying their fair share of the transportation burden, that that is a discrimination against the revenue of the Milwaukee Railroad, whether it be from passenger service interstate or freight service interstate.

A. Yes, sir.

[fol. 143] Mr. Wilkenson: That is all.

Exam. Fuller: You are in the same position of Mr. Hart. You have made no cost study, have you?

The witness: No, sir.

Exam. Fuller: Any questions?

Cross examination.

By Mr. Fisher:

Q. Mr. Scott, is there a difference in the likelihood of a customer using coal as against other fuels, which might result from his being located close to a railroad as compared with gas that might be delivered by pipe line, electricity delivered on transmission line?

A. Is there,—I don't get the point of the question. I am sorry.

Q. Might a customer be more likely to use coal because he lives near a railroad?

A. No, no, we have lost a substantial number of customers that are served by railroads to gas and oil.

Q. Well, that is true, but would you not be more likely to lose them if they lived more distant from a railroad?

A. Well, it would be an added cost of getting the coal from the rail siding to the consumer's plant or to his building. That would result in additional rail cost of coal to that consumer and that might effect it, yes.

Q. I understand, but electricity is a fuel that is more easily delivered at distances from railroads than coal.

[fol. 144] Q. We don't compete with electricity.

Q. At all?

A. No, compete with natural gas and oil.

Q. Natural gas then, would what I said be true of that, of natural gas?

A. To a very minor extent, so minor I don't think it plays much part in it.

Q. Well, the question I am really getting at, Mr. Scott, is whether you do not regard the railroad transportation system of this country as a network along which people live and along which commodities move to these people, and it is a good idea to have passengers traveling the railroads and living by them. Doesn't that help business?

A. Definitely.

Q. If the all passenger traffic came to an end on the railroads, it would be a hardship to the coal industry, and probably other people too.

A. I would say it would be a help to the coal industry.

Q. If all passenger traffic on the railroads were eliminated?

A. Yes, sir.

Q. Are you in favor of elimination of all passenger traffic on railroads?

A. That is not what you asked me, but I am not in favor of it, no, sir.

Q. Why not?

[fol. 145] A. Because the railroads would perform that service under their certificate of public convenience and necessity, but I do think the people that use that service should pay a proper portion, a proportionate share of operating the railroad.

Q. A moment ago you said it would be a hardship if passenger traffic came to an end on the railroad.

A. Yes, sir, I say that. I am not advocating that.

Q. I understand that. If a very small subsidy could keep this passenger traffic going, the elimination which you regard as a hardship, might it be worthwhile if it was a very small amount?

A. I don't think you can——

Q. Yes?

A. No, I prefer my own answers. I don't think you can look at it just that way. You can't take out all passenger service. All passenger service should pay its proportionate share, whether it is this passenger service at issue in this proceeding, or otherwise, it still should pay its proportionate share of operating the railroad.

Q. I understand that might be nice in a perfect world.

Exam. Fuller: Let me ask the witness a question. We have stated a principle somewhat like this, as a practical matter. As you know, we have been through a lot of freight cases.

The Witness: Yes, sir.

Exam. Fuller: We have had to consider the passenger deficit in a sense a part of the overhead burden to which [fol. 146] freight must contribute.

The Witness: Yes, sir.

Exam. Fuller: As a practical matter.

The Witness: You so stated in Ex Parte 175.

Exam. Fuller: At the same time it is your opinion that that does not excuse the passenger service from contributing all that it reasonably can toward that burden.

The Witness: Yes, sir, it should contribute all it reasonably can, and I presume that amount would be determined by this Commission.

Exam. Fuller: And that, of course, would have to be determined by cost of the service and value of the service.

The Witness: Yes, sir.

By Mr. Fisher:

Q. Well, then in this overall view which the Examiner has brought out, the situation might arise, in your opinion, where passenger traffic might be contributing all it reasonably might and still not be meeting fully allocated expenses.

A. Yes, and as I read this petition, that is what is stated in this petition. This increase will not do that.

Mr. Fisher: No more questions.

By Mr. Gibbons:

Q. You have testified as to the general decline of freight shipments for 1946 to 1953, and you stated that this decline was due largely to an increase in freight rates. Might there have been other factors which have caused the decline [fol. 147] in volume of freight shipments?

A. Oh, undoubtedly there were, but as I stated, it was largely due to the increases in the freight rates that have

come along since that time. For example, to point that out, the FOB mine price on the coal that is being sold has been materially reduced during that time. In 1949 it was $4.05 a ton on a national scale. FOB the mine in 1954, it was $3.61, which is a substantial reduction in the FOB mine price.

Now, during that period, we have had substantial increases in the cost of producing coal which the coal operators have had to absorb. When you get a freight rate on coal now, that is unreasonably high, the coal operator must of necessity absorb the high part of that freight rate in his FOB mine price. That is a part of the business of selling coal today. We must do that and that is why we are so concerned, because the cost of our, the realization on our coal FOB mine has gotten to the point where it is not paying for the cost of production.

Q. With respect to the Indiana situation especially, couldn't the decline be caused by the fact that in that period there was not as much coal mined as in previous years?

A. The reason there wasn't as much coal mined, sir, is because we lost our market for these reasons that I stated, among others.

Mr. Wilkenson: The capacity to produce coal is as great or greater than it was in '46?

The Witness: It is greater today than in '46.

[fol. 148] Exam. Fuller: Since World War II you had an increase in the mine price up to 1949, did you not?

The Witness: Yes, we did. I do not have those figures here Mr. Fuller.

Exam. Fuller: 1949 was the turning point when they started going down again.

The Witness: That's right, 1949 $4.05; in 1950 $3.97, in 1951 $4.04, and in 1952 $3.97, 1953 $3.94, and in 1954 $3.61. Our price last year, for example, decreased 33 cents a ton, in Indiana. That is Indiana prices I just gave you.

Exam. Fuller: What I was getting at, to the extent that the present price is higher than it was when these general increases started, the increase in the price would have an effect as well as the increase in freight rate.

The Witness: Yes, but since '46, the increases in the freight rate in Indiana, have been greater than the increase

in the mine price. Another thing you must realize too, and as I have testified in other cases, that during—that prior to World War II, in 1939, which the railroad uses as a base year in their Ex Parte cases, our FOB mine prices were at absolute minimum. They were below the cost of producing the coal where the railroads themselves were not in that fix, particularly as they have got Ex Parte 115 increase in 1937.

Mr. Gibbons: The Guthrie Act was passed in 1938 to save the coal industry from being washed out.

[fol. 149] The Witness: Yes, sir.

Mr. Gibbons: And put a bottom under the price at which coal could be sold.

The Witness: That's right.

Exam. Fuller: That is a discretionary situation the Examiner is in. In the commutation case the railroads are not making any money, and over in the coal case the coal people are not making any money.

The Witness: Well, the railroads, most of them are not making any money. I mean, a substantial amount of money, but most of them are having a return on their investment which is more than the coal mining industry is having.

Exam. Fuller: You are not talking about commutation business.

The Witness: No, sir, I am not. Our coal is paying most of that return.

Exam. Fuller: Are there any other questions?

Mr. Fisher: No, sir.

Exam. Fuller: That is all. You are excused.

(Witness excused.)

Exam. Fuller: Do we have another intervenor?

Mr. Merrill: Mr. Thomas, sir.

Floyd L. Thomas was sworn and testified as follows:

Direct examination.

The Witness: My name is Floyd L. Thomas. I am traffic [fol. 150] Manager of the Wisconsin Canners Association, Madison, Wisconsin. I am a registered practitioner. I have

been engaged in traffic work for the past 45 years, both in the railroads and commercially.

The Wisconsin Canners Association is an association of Wisconsin Canners comprising 91 canning companies, operating 132 vegetable and fruit processing plants in the State of Wisconsin. Approximately one-third of these canning factories, processing plants, are located on the tracks of the Milwaukee Railroad.

We have a very distinct interest in the matter here under consideration, as we feel our members interest and customers interest are very much affected by the freight rates they are required to pay.

In 1954, the production of canned vegetables alone in Wisconsin approximated 25,900,000 cases, major pack slightly in excess of 11 million cases of peas, eight million cases of corn, about three million cases of beets, and three million cases of snap beans, the balance being miscellaneous vegetables, this total production being slightly over 913 million pounds or approximately 450,000 tons of canned foods.

In order to make this production of canned foods we transported by rail—we transport by rail approximately 100 per cent of our tin can requirements, paper boxes, coal, sugar and salt. The distribution of Wisconsin canned vegetables is into every state of the Union. A recent survey would indicate that approximately 60 per cent of this tonnage moves in the territory east of Chicago, commonly [fol. 151] known as Truck Line CFA Territory. About 15 per cent moves into the Chicago area and *hearby* suburbs. Another 15 per cent into Western Trunk Line Territory, the balance into Southern South Western and Transcontinental Territory.

All types of transportation are used on the outbound movements. That is railroad, common, contract motor carriers and private motor carriers. It is hard to determine the exact portion of this traffic that moves by each of the various types of transportation facilities, although a study I made sometime ago would indicate that for distances of in excess of 500 miles the major portion is by railroad. Between 200 and 500 miles I would say that the tonnage is equally split between contract carriers and rail carriers. Very few common motor carriers handle canned foods

for any substantial distances. Under distances of less than 200 miles a major portion is by motor truck both private, common and contract motor carrier, and a very small portion by rail, especially into Chicago, Minneapolis, Milwaukee and adjacent territory.

Now, I am getting into figures here that are hearsay. It is noted by the 1953 ICC reports that the Class I railroads deficit in 1952 from passenger and allied services, and also data obtained from the Wisconsin Public Service Commission yesterday, was that there is $33,873,971 revenue per passenger and allied services and charges. There is likewise charged $50,910,876 against passenger train operation, which would indicate a deficit of $17,036,959, [fol. 152] which would have to come out of freight or other revenues gained by the railroads.

Mr. Merrill: Whose deficit are you speaking of, Mr. Witness?

The Witness: Pardon me?

Mr. Merrill: Whose deficit are you referring to in that testimony?

The Witness: Deficit of the railroads, passenger deficit.

Mr. Merrill: Of all railroads or the Milwaukee Railroad?

The Witness: All railroads.

Mr. Fisher: Passenger deficit of all Class I Railroads?

The Witness: No, Milwaukee Road, yes, Milwaukee Road.

Mr. Merrill: For what year, Mr. Thomas?

The Witness: I think that was not given to me. That was given to me by the statistician of the Public Service Commission of Wisconsin.

Mr. Fisher: What year?

The Witness: He didn't say, but I assume it was 1953. In other words, it would appear for every dollar taken in by the railroad in passenger revenue, they have had to add fifty cents out of their other revenues to meet the deficit.

The impact of such deficit in passenger revenues is unquestionably felt by the shipping public in increased freight rates and charges. Since 1946, there has been a steady increase in freight rates and charges of pyramid type.

Until today we are paying on canned goods increased [fol. 153] rates in excess of 90 per cent of those charged in 1946. The result of this peak level of freight rates has

been to cause a diversion of traffic to motor carriers of a very substantial amount.

Nothwithstanding efforts made in the past to obtain relief from such high freight rates exacted to our commodity, the railroads could not give us the reductions we sought, which were very miner we felt.

We believe that passenger using public should pay a fair and just portion. Freight shippers should not be called upon to pay this deficit. I can see no justification whatever that freight rates or charges on the shipping public have to support a passenger revenue deficit. I would support this petition.

That concludes my statement.

Mr. Merrill: May I ask a question?

Exam. Fuller: Yes.

By Mr. Merrill:

Q. Mr. Thomas, could you make an estimate of what proportion of the total rail business handled for your members is handled by the Milwaukee Railroad?

A. No, I could not. Are you talking about outbound or inbound now?

Q. Both outbound and inbound.

A. Inbound moves in tin cans, paper boxes, salt and sugar, machinery, is virtually all by rail, but on the outbound movement of canned goods, that is hard to determine because of the truck movement of contract carriers.

[fol. 154] Q. The Milwaukee Road is one of the principal railroads of the Wisconsin Canners. Is that right?

A. It certainly is.

Q. Would you, as a reasonable estimate, state that at least one-third of the rail business would be handled by the Milwaukee Railroad for your members?

A. One-third? Inbound tonnage of tin cans and other articles entering into the manufacture of canned goods would move by rail, the Milwaukee Railroad.

Q. I am speaking strictly of rail tonnage, Mr. Thomas, both inbound and outbound, excluding that tonnage which moves by motor vehicle or other forms of transportation. Confining it strictly to rail.

A. That would be hard to determine, very hard to determine on the outbound movement.

Q. You feel that would be a reasonable estimate on the inbound movement as a minimum figure?

A. Yes, yes.

Mr. Merrill: All right, sir, that is all I have.

Cross examination.

By Mr. Fisher:

Q. Mr. Thomas, what portion of this Milwaukee Railroad deficit you referred to derives from suburban operations?

A. I don't know.

Q. Do you know?

A. No.

[fol. 155] Q. Do you know what effect, if any, on the rates that canners pay might result if this petition were granted?

A. Be hard to determine.

Q. You do not know?

A. No.

Q. Do you know whether 1953 was a typical year in the railroad business?

Mr. Merrill: From what standpoint?

Mr. Fisher: In the measurement of deficits from passenger losses.

A. I couldn't say as to that.

Mr. Fisher: That is all.

Mr. Merrill: Nothing further, sir.

Exam. Fuller: That is all. You are excused.

(Witness excused.)

Mr. Merrill: We may have one or two more witnesses. I know one is not here. If we have more I believe they will be here right after lunch, Mr. Examiner. Could we take a noon recess at this time?

Exam. Fuller: I was going to stop at 12:30.

Mr. Merrill: We can proceed with our rail evidence if you desire, and ask leave to withdraw the witness.

Exam. Fuller: All right.

Mr. Merrill: Mr. Stephenson.

[fol. 156] R. S. Stephenson was sworn and testified as follows:

Mr. Merrill: The men are going to lug in the exhibits here, Mr. Examiner, and we will distribute them as soon as they get them here.

Exam. Fuller: Locomotives in Chicago Suburban Service will be No. 8. Description of Cars Regularly Assigned to Chicago Suburban Service will be No. 9. Statement Showing Number of Passengers Carried in Chicago Suburban Service Years, 1940-1954 will be No. 10. Statistics of Suburban Operation in the Chicago Area Year 1954, will be No. 11.

(Respondent's Exhibits Nos. 8 to 11, Witness Stephenson, were marked for identification.)

Mr. Merrill: Mr. Examiner, have we marked Exhibit No. 12?

Exam. Fuller: No, we haven't.

Mr. Merrill: I would like to suggest this be banded together as one exhibit, but there are 12 parts and each one is respectively numbered. Could we mark them 12-A, 12-B and 12-C? In other words, the first page will be marked 12-A.

Exam. Fuller: Couldn't you leave it the way it is? The A is already on there.

Mr. Merrill: All right. It is 13 parts, not 12.

Exam. Fuller: Comparison of Suburban Expenses with Suburban Revenues, Year of 1954, is No. 12.

[fol. 157] (Respondent's Exhibit No. 12, Witness Stephenson, was marked for identification.)

Mr. Merrill: There are several more.

Exam. Fuller: Comparison of Suburban Expenses with Suburban Revenues, September to December, 1954, inclusive, is No. 13.

(Respondent's Exhibit No. 13, Witness Stephenson, was marked for identification.)

Exam. Fuller: When was the dieselization?

Mr. Merrill: It was 100 per cent in September, beginning in September.

Exam. Fuller: What is the significance of that then? This is the significance of that? Is that it?

Mr. Merrill: That is correct, sir.

Exam. Fuller: No. 14 is Operating Expenses, Etc., for the Year 1954.

(Respondent's Exhibit No. 14, Witness Stephenson, was marked for identification.)

Mr. Merrill: That is of the Chicago Union Station Company.

Exam. Fuller: Yes, Chicago Union Station. No. 15, is Commutation and Multiple Ride Ticket Fares.

(Respondent's Exhibit No. 15, Witness Stephenson, was marked for identification.)

Exam. Fuller: We will adjourn until 2:00 o'clock.

(Whereupon, at 12:15 p. m., a recess was taken until 2:00 p. m. of the same day.)

[fol. 158] AFTERNOON SESSION 2:00 p. m.

Exam. Fuller: All right, on the record. Let us proceed.

Direct examination.

By Mr. Merrill:

Q. Will you state your name and address, please sir?

A. My name is R. S. Stephenson. My address is 744 Union Station, Chicago 6, Illinois.

Q. By whom are you employed?

A. I am employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as Comptroller.

Q. What has been your railroad accounting and statistical experience, briefly?

A. I have been in railroad service 43 years. I was with the Chicago Great Western Railway in the operating mechanical accounting and executive departments from 1912 until 1935, except for two years during World War I, when I was with the Railway Engineer Regiment operating military railways in France.

I was employed by the Milwaukee Railroad as special accountant and statistician from November 1, 1935 to July 1, 1942, when I returned to Chicago Great Western as comptroller.

On February 1, 1945, I was again employed by the Milwaukee Railroad as an assistant comptroller. I was elected comptroller on May 10, 1949, which position I still hold.

Q. Were the exhibits which have been marked 8, 9, 10, 11, 12, 13, 14 and 15 for identification, prepared under your direct supervision?

[fol. 159] A. They were.

Q. Will you please explain what those exhibits purport to show?

A. Exhibit No. 8, describes the locomotives, all diesel-electric, regularly assigned to suburban service. It shows the serial number of the locomotive, its horse power, year built, original cost, amount of depreciation accrued to December 31, 1954, and amount of annual depreciation. The original cost of all of the locomotives is $3,166,572 and the amount of depreciation accrued to December 31, 1954, is $932,041.

Depreciation is accrued on the group method both for accounting under Interstate Commerce Commission's classification and for Federal income tax purposes at the same rate. This rate is 4.90 per cent per annum and it is based on an average service life of 20 years.

Q. Will you explain the abbreviation in Column 3?

A. On line 1, the word Alco appears. That is an abbreviation for American Locomotive Company. The next five lines the manufacturer is shown as EMD. That represents the Electromotive Division of General Motors Corporation. On the next six lines FM is shown. That represents Fairbanks Morris & Company. And on the last six lines, EMD appears again, being the Electromotive Division.

Exam. Fuller: When were these locomotives assigned to the suburban service?

The Witness: The locomotives No. 2426 to 2435 were acquired in 1954. I believe they were received in August and [fol. 160] were assigned to suburban service at that time. The other locomotives were assigned progressively throughout the year beginning in January.

Exam. Fuller: The year?

The Witness: Well, progressively during the first eight months, let us say.

Mr. Guthrie: 1954?

The Witness: 1954, so that as of September 1, all motive power was by diesel-electric locomotives.

Exam. Fuller: That was September 1, 1954.

The Witness: 1954, yes, sir.

By Mr. Merrill:

Q. Will you proceed, please?

A. Exhibit No. 9, consisting of four sheets describes the cars regularly assigned to Chicago suburban service. It shows the car number, date built, year assigned to suburban service, except for a few cars for which the record was not available, seating capacity, original cost, amount of depreciation accrued to December 31, 1954, and the amount of annual depreciation.

The exhibit covers 116 coaches, 11 combination passenger and baggage cars and four head end cars, or a total of 131 in cars.

Exam. Fuller: What is the explanation of where you have brackets there under annual depreciation?

The Witness: The amount of annual depreciation is zero for cars in respect of which the accrued depreciation is equal to the salvage value contemplated in the depreciation rate.

[fol. 161] Exam. Fuller: In a sense then, they have already been fully depreciated.

The Witness: That is right.

Exam. Fuller: All right.

The Witness: The total original cost is $2,627,133 and the depreciation accrued to December 31, 1954, is $2,334,404. The total annual depreciation is $39,842.

Depreciation both for the purpose of accounting under Interstate Commerce Commission classification and for Federal income tax purposes is on a group basis through the use of component rates for cars of similar construction and of about the same age. The present rates vary from 1.70 to 3.18 per cent. The amount of annual depreciation

is zero for cars in respect of which the accrued depreciation is equal to the estimated salvage value contemplated in the depreciation rate.

Exhibit No. 10, shows the number of passengers carried in commutation and suburban service for the years 1940 to 1954, inclusive. The total number of passengers carried in Chicago suburban service for the year 1954 was 4,869,064, of which 3,910,526 held commutation and multiple ride tickets and 958,538 held one way or round trip tickets or paid cash fares on the trains.

Exam. Fuller: This Exhibit 10 is number of rides, I assume.

The Witness: Yes, that is the number of rides.

Exam. Fuller: How do you figure number of rides on a commutation ticket?

[fol. 162] The Witness: Well, it is number of tickets multiplied by the number of rides permitted by the ticket. In other words, if it is a 46 ride ticket, it would be 46 times one ticket, or 46 rides.

Exam. Fuller: What is your other monthly ticket?

The Witness: Oh, there is, I think there is an unrestricted. I am not so sure what the other one is.

Exam. Fuller: I thought you had a nonrestricted.

The Witness: I think we do.

Exam. Fuller: I wonder what figure you use in connection with that?

The Witness: Sixty.

Exam. Fuller: I believe that unrestricted supersedes the 60 ride ticket somewhere along the line. Anyhow for the 60 ride or unrestricted you use 60 rides.

The Witness: That is right.

Exam. Fuller: All right, go on.

The Witness: Exhibit No. 11 shows in summary form the general statistics in connection with suburban operation in the Chicago area for the year 1954, including miles operated, number of stations in the territory, number of trains operated, number of passengers carried and the train locomotive and passenger car miles with certain averages as set forth in lines 36 to 55.

The average revenue per train mile including mail and express, is $2.42; the operating expenses, taxes and rents

per train mile on a fully distributed basis is $5.18, and on an out-of-pocket basis, $3.72.

[fol. 163] Average revenue per car mile, including mail and express is 54 cents, and the average number of revenue passengers per car is a little less than 33. The average revenue per passenger mile of commutation passengers is 1.47 cents. The average per passenger mile for passengers holding one way and round trip tickets and who paid cash fares on trains is 2.40 cents. The average distance a suburban passenger is carried is about 23 miles.

Exam. Fuller: These expenses are based on your entire year operation for 1954?

The Witness: That is right.

Exam. Fuller: Including the eight months before you completely dieselized and the four months thereafter?

The Witness: That is right.

Exhibit 12, consists of four schedules which, taken together, provide a comparison of suburban expenses with suburban revenues for the year 1954, exclusive of Chicago Union Station Company expenses which are treated separately. These schedules follow very closely the "Formula providing for a comparison of railway revenues with expenses for suburban and commutation services," designated as Rail-Commutation 10-43, which was developed by the Coast Section of the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, for the purpose indicated in its title and which was distributed in January, 1944. This Cost Section is now part of the Bureau of Accounts, Cost Finding and Valuation, Interstate Commerce Commission.

[fol. 164] Exam. Fuller: Is that the so-called Edwards Formula?

The Witness: It was developed during Dr. Edwards time with the Commission.

The Summary Schedule, which is identified as No. 12-A, brings together the figures which are developed in detail in the three schedules identified as 12-B, 12-C and 12-D, and I will explain the latter schedules first.

Expense Schedule A, which is identified as Exhibit 12-B, consisting of three sheets, shows the suburban out-of-pocket expenses for the year 1954, exclusive of Chicago

Union Station expenses, which are shown in a later exhibit. The account numbers and names are given in columns 1 and 2; the amount in column 3, and the derivation of out-of-pocket expenses for suburban service is set forth in column 4.

At this point I should like the record to show the definition of certain terms relating to cost of suburban operations as they are used throughout this cost study and in my testimony. They are:

Out-of-pocket Expense: Separable expense which over a period of time could be avoided if suburban service were not required.

Fully Distributed Expense: Out-of-pocket expense, plus a ratable proportion of constant expense.

Constant Expense: Cost not affected by volume of traffic.

The foregoing definitions conform to the principles set forth in the suburban cost formula.

The tracks used in suburban service are located in parts [fol. 165] of three operating divisions, the Chicago Terminal, Milwaukee Division, and the Dubuque-Illinois Division. However, we have set up accounting procedures so that, for the most part, we are able to narrow the study of expenses to the Chicago suburban service area. Whenever expenses of the three divisions are used, that explanation is made.

This expense schedule is largely self-explanatory and I will not repeat the explanations given in column 4, except as may be required for clarification.

A typical account is number 227, Station and office buildings. As to those station buildings which are solely used in suburban service, the actual maintenance expense is included. An example is the suburban shelter at Forest Glen.

In January, 1954, extensive repairs were made to this shelter at a cost of $940.65. All of this amount is included in the out-of-pocket expenses.

In February, 1954, repairs were made to the station building at Deerfield at a cost of $220.28. This building is used jointly by suburban and other services. The portion attributable to suburban service was developed in a study

made by the Station Agent and a traveling auditor, the suburban service portion being 60 per cent.

The proportion affected by use, set forth in the Railroad Maintenance Study, Engineering Section of the Bureau of Valuation, Interstate Commerce Commission for station [fol. 166] buildings, is 20 per cent. The out-of-pocket expense for this work then is 20 per cent of 60 per cent of the total cost of $220.28 or $26.43.

The total suburban out-of-pocket expenses for the year 1954, as developed in Exhibit 12-B, are as follows:

Maintenance of way and structures	$93,913
Maintenance of equipment	753,375
Traffic	2,712
Transportation	1,653,180
General	8,364
Total operating expenses (including payroll taxes)	2,511,544

These amounts are carried to the summary sheet identified as Exhibit 12-A, and appear thereon in colu-n 3.

Expense Schedule B, which is identified as Exhibit 12-C, consisting of three sheets, sets forth suburban fully distributed expenses for the year 1954. The account number and name appear in columns 1 and 2. The out-of-pocket expenses; including solely related expenses, as developed in Expense Schedule A, are set forth in column 3. The suburban portion of constant expenses common to suburban and other services is developed in colu-n 4. The suburban fully distributed expenses are shown in column 5, these amounts being the sum of amounts in columns 3 and 4 for each account, and full distributed expenses directly included for certain accounts, as indicated.

In column 6, is shown the deriviation of suburban portion of constant expenses common to suburban and other services for inclusion, where so indicated, in column 5. This schedule is also largely self-explanatory. Carrying on the [fol. 167] example of the station at Deerfield, which is jointly used by suburban and other traffic, the suburban portion of the joint expense aggregating $220.28 was 60 per cent, or $132.17. The out-of-pocket portion of this expense

was 20 per cent thereof, or $26.43. The suburban portion of the constant expense is the remainder, or $105.74, which amount is included in column 4.

The total suburban fully distributed expenses for the year 1954, as developed in Exhibit 12-C, are as follows:

Maintenance of way and structures	$330,126
Maintenance of equipment	782,061
Traffic	2,712
Transportation	1,900,864
General	136,484
Total operating expenses (including payroll taxes)	3,152,247
Property taxes	153,785
Total operating expenses and taxes	3,306,032

These amounts are carried to the summary sheet identified as Exhibit 12-A and appear thereon in column 4.

Revenue Schedule, identified as Exhibit 12-D, consisting of one sheet, shows the suburban revenues for the year 1954. All revenues are the actual, all having been developed from the accounts except the express revenue which was estimated by our Manager, Mail, Express, Baggage and Milk, by reference to the car foot miles involved.

Passenger revenue is separated as between commutation tickets, multiple ride tickets, and other, the latter consisting of one-way and round trip tickets, and cash fares collected on trains. The amounts here shown are carried to the summary sheet, Exhibit 12-A, and appear thereon in [fol. 168] column 4. Out-of-pocket suburban expenses, exclusive of Chicago Union Station expenses, are $2,511,544, and fully distributed suburban expenses, also exclusive of Chicago Union Station expenses, are $3,306,032, as compared with suburban revenues of $1,833,252.

During the first eight months of 1954, the motive power for suburban trains was partly steam locomotives and partly diesel-electric locomotives. In January, 1954, eight per cent only was by diesels, and 92 per cent by steam locomotives. During the year 1954, 58, 1750 horse power diesel-electric road switching locomotives and 33, 1600 horse power diesel-electric road switching locomotives, as

well as 30 freight and switching units were delivered. This permitted the replacement of steam with diesels progressively, so that suburban trains were wholly dieselized by the end of August.

In order that your Commission may have the benefit of expense figures as the suburban service is now operated, we have prepared a separate set of exhibits corresponding to Exhibits 12-A, 12-B, 12-C and 12-D, covering the four months September to December, 1954, inclusive. The amounts set forth in these exhibits are included in the amounts for the full year 1954. Their development, of course, follows the Cost Section's formula.

Expense Schedule A, identified as Exhibit 13-B, shows the suburban out-of-pocket expenses for the four months ending, or the four months September to December, 1954 [fol. 169] inclusive, to be $764,224. Expense Schedule B, identified as Exhibit 13-C, shows the suburban fully distributed expenses for the same four months to be $1,019,523. Revenue Schedule, identified as Exhibit 13-D, shows the suburban revenues for the four months to be $621,685. These figures are brought together on Summary Schedule, Exhibit 13-A.

The revenues fail to equal the out-of-pocket expense of performing the suburban service, without inclusion of Chicago Union Station expenses, by wide margins, both for the year 1954 and for the last four months of that year. When the suburban service fails to pay its out-of-pocket expenses, the resulting deficit, as well as the larger deficit based upon fully distributed expenses, must be borne by the respondent's only profitable operation, namely, its freight service.

Exam. Fuller: Have you figured out on an annual basis how much the dieselization has reduced your out-of-pocket loss?

The Witness: No, except we have the figures for the four months. I suppose the best thing that could be done, not having operated for a full year, is to multiply those four months by three.

Exam. Fuller: I thought maybe you had some general idea of what the figure was.

The Witness: I have not made the multiplication, but I can do it.

Mr. Merrill: Do you want it multiplied out, Mr. Examiner?

[fol. 170] Exam. Fuller: You do not have to stop and do it now. Give it to me before you are through.

The Witness: Exhibit No. 14, consisting of ten sheets, shows the operating expenses, rents, taxes, fixed and other charges, less revenues and other income, of Chicago Union Station Company, proportions thereof paid by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and proportions thereof which would not have been paid if no suburban business had been conducted by Chicago, Milwaukee, St. Paul and Pacific Railroad Company for the year 1954.

Before going into a detailed explanation of this exhibit, I should explain that the capital stock of the Chicago Union Station Company is owned by the Pennsylvania, the Burlington and the Milwaukee Railroads in the proportions of 50 per cent, 25 per cent and 25 per cent, respectively.

The facilities of the Chicago Union Station are used jointly by four railroads, Pennsylvania, Burlington, Gulf, Mobile and Ohio, and the Milwaukee. The Milwaukee Railroad uses the train sheds, platforms and tracks north of the concourse almost exclusively, and the three other roads use the similar facilities south of the concourse.

Under existing contracts, the three stockholders, the Pennsylvania, Burlington and Milwaukee, and the tenant, Gulf, Mobile and Ohio Railroad, which owns no stock in the Union Station Company, pay the maintenance and [fol. 171] operating expenses of the station facilities on the basis of use.

The determination of the amounts that each company shall pay is made as follows: The Gulf, Mobile & Ohio, pays that proportion of these expenses that the number of its locomotives and cars entering upon the property during any month bears to the total number of locomotives and cars of all users entering the property during the same period.

After determination of the Gulf, Mobile & Ohio's share, that amount is deducted from the total expenses and the balance is similarly divided among the three users who are also stockholders, the only change in the formula for

division being that suburban cars, in computing the respective proportions, are each counted as four-fifths of a car.

Exam. Fuller: What is the basis for that?

The Witness: It was set back in the original contract, back in 1915. I don't know that I can say much further about it. It apparently was for the purpose of reducing the expenses that would be assigned to a suburban car.

Exam. Fuller: Don't the locomotives count as two cars?

The Witness: That is right, steam locomotives.

Mr. Guthrie: Is that the same as diesel?

The Witness: Each unit of a diesel is counted.

Mr. Guthrie: Is counted as a car?

The Witness: Yes.

Mr. Merrill: Go ahead, Mr. Stephenson.

Exam. Fuller: I just wonder, does a suburban car get [fol. 172] less service in the Union Station?

The Witness: Not a bit.

Exam. Fuller: All right.

The Witness: The Gulf, Mobile & Ohio Railroad Company pays seven per cent of interest on bonds, taxes, dividend on capital stock, as well as seven per cent on the amount of investment in station and facilities which is in excess of the outstanding capital obligations. It receives credit for certain revenues and other income of the Station Company, less expenses connected therewith, on the basis of its per cent of use of the station facilities.

The three stockholders pay the remaining amounts representing interest on bonds, taxes, dividend on capital stock, and so on, less operating revenues and expenses connected therewith, on the basis of ownership, that is, the Pennsylvania, pays 50 per cent and the Burlington and Milwaukee Railroads pay 25 per cent each.

The total investment of the Chicago Union Station Company in road property as of December 31, 1954, was $83,161,722.28. Its long term debt consisted of $53,800,000 of First Mortgage Bonds and $17,848,364.63 of investment advances made to it by its proprietors. The approximate investment in properties, including land north of the concourse almost exclusively used by the Milwaukee Road for its through and suburban passenger trains, is $19,020,000. This does not include any part of the concourse which cost

$2,836,998 and the headhouse, Canal Street sub-space, [fol. 173] and other facilities.

During October, 1954, the Chicago Union Station sustained heavy damage as a result of the Chicago River overflowing its banks. The amount of this extraordinary flood damage expense incurred during the year 1954, is $751,378.33.

In Exhibit No. 14, this amount has been deducted at the outset and these amounts are not reflected in any of the subsequent computations.

On sheet 1 there is set forth a summary of what follows on sheets 2 to 9, inclusive. In column 1 there is set forth the expense or revenue groups. Column 2 refers to the source as taken from following sheets, and in column 3, the total station net cost after elimination of the extraordinary flood damage expenses.

It will be noted that the total operating expenses and rents for the year 1954, exclusive of flood damage, amount to $5,502,673.44 and the taxes, fixed and other charges amount to $3,020,812.51, and the total expenses, rents, taxes, fixed and other charges amount to $8,523,485.95.

From this amount there is deducted the operating revenues such as receipts from station privileges, parcel room, storage of baggage, power sold, rents paid by Fred Harvey and by railroads and others for office space, and other items of income. The net cost for the year 1954 borne by the four railroad companies using the Station is $6,432,040.44.

On sheets 2 to 5 of this exhibit, there is set forth the [fol. 174] computations, by individual accounts, through which the proprietary lines' proportion of the net cost of operating the Union Station is determined. From the total in column 2, of these sheets, there are first deducted the extraordinary flood damage expense appearing in column 3, and the proportion of the net cost bo ne by the tenant company, the Gulf, Mobile & Ohio in column 5.

The total net cost borne by the three priprietors appears in column 6, and the respective amounts which are shared by the proprietors on an ownership and on a use basis are set out in columns 7 and 8. The net cost for the year 1954 borne by the three proprietors is $5,947,169.20, of

which $2,447,590.84 is divided on the basis of ownership and $3,499,578.36 on the basis of use.

Mr. Guthrie: Will you show where you took out that $751,000? I am not questioning you about it, but is that shown on here where it is taken out? Does that appear?

The Witness: Yes.

Mr. Guthrie: Where is it?

The Witness: On sheets 2 to 5.

Mr. Guthrie: I see it. I have it. All right, thank you.

The Witness: Referring again to sheet 1 of this exhibit, the Milwaukee Road's proportion of the net cost of operation of the Chicago Union Station for the year 1954 appears in column 4. Its proportion of the operating expenses and miscellaneous rents is $1,604,647.11, which appears on line [fol. 175] 8; its proportion of taxes, fixed and other charges is $2,306,747.20, see line 12; its proportion of operating revenues and other income is $508,445.45, on line 15, and its proportion of all costs less revenues is $1,798,302.05.

On sheets 6 to 9 of this exhibit, there is set forth in columns 2 to 4, the results of the computations, by individual accounts, through which is determined the Milwaukee Road's proportion of the net cost of operating the Union Station, borne by the three proprietary lines.

As I said before, operating expenses and miscellaneous rents, for the most part, are divided among the three users who are stockholders in proportion to the respective number of locomotives and cars entering upon the property.

The count of cars and locomotives is set forth on sheet 10. In this count a steam locomotive is given the count of two, each unit of a diesel-electric locomotive is counted as one, and each suburban car is counted as four-fifths of a car. It will be noted that the Milwaukee Road's proportion of the total car count is 230,558, or 33.901351 per cent of the total, and that of the 230,558, through trains contributed 151,211, or 65.584799 per cent, while the suburban trains contributed 79,347, or 34.415201 per cent.

I also said that the three stockholder users pay the amounts representing interest on bonds, taxes, including payroll taxes, dividend on capital stock, and so on, less [fol. 176] operating revenues and expenses connected therewith, remaining after the Gulf, Mobile & Ohio's pro-

portions are deducted, on the basis of ownership which is Pennsylvania 50 per cent, Burlington 25 per cent and the Milwaukee Road 25 per cent.

Turning to sheet 6, the amounts which the Milwaukee Road pays on an ownership basis, appear in column 3. This is 25 per cent of the amount of similar items appearing in colu-n 7 of sheet 2. Likewise, the amounts in column 3 of sheets 7, 8, and 9, are 25 per cent of the amount of similar items appearing in column 7 of sheets 3, 4, and 5.

The amounts which the Milwaukee Road pays on a use basis appear in column 4, sheet 6. This is 33.901351 per cent of the amount of similar items appearing in column 8 of sheet 2.

Also, the amounts in column 4 of sheets 7, 8 and 9, are 33.901351 per cent of the amount of similar items appearing in column 8 of sheets 3, 4 and 5. Amounts in column 2 of sheets 6, 7, 8 and 9 are the sum of corresponding amounts in columns 3 and 4. The group totals of column 2 of these sheets are carried to column 40 of sheet 1. The net cost to the Milwaukee Road of both through and suburban service for the year 1954, are stated, $1,798,302.05.

Columns 5 and 6 of sheet 1 are apportionments of column 4, between through service and suburban service in the proportions that the number of locomotives and cars of each service entering upon Union Station property bear to the total number of locomotives and cars, except that [fol. 177] suburban cars are counted as four-fifths of a car.

The percentages are: through service, 65.584799 per cent, suburban service, 34.415201 per cent. These are developed on sheet 10, lines 3 to 5, column 4. Detail by individual accounts will be found in columns 5 to 10 of sheets 6 through 9. The net cost to the Milwaukee Road of suburban service on the fully distributed basis for the year 1954, is $618,889.27. This constitutes the rent which the Milwaukee Railroad paid to Chicago Union Station Company for the year 1954, which is attributable to suburban service.

The out-of-pocket expense of suburban service is the amount of such rent which would be saved if suburban service were discontinued. It consists of amounts which would not be paid to the Chicago Union Station Company

if the suburban service were abandoned. Quoting directly from the suburban and commutation cost formula developed by the Cost Finding Section, Bureau of Accounts, Cost Finding, and Valuation, Interstate Commerce Commission:

"The saving ordinarily should reflect those rents which respondent now pays on a wheelage, mileage, or other user basis, and which would not be paid if the suburban service were abandoned. The saving ordinarily would not include any rents paid by respondent in the form of taxes, interest, or other fixed charges of a terminal company, and which respondent, as an owner or tenant of such terminal company, would continue to pay even though its suburban service were discontinued."

[fol. 178] The Milwaukee Road paid the Chicago Union Station Company $1,186,404.34 as rent on a user basis for the year 1954, which is 33.901351 per cent of the total paid by the three stockholders on a user basis of $3,499,578.36. If suburban service were discontinued, the percentage which would have been applied to the total of $3,499,578.36 is 25.170873 per cent.

The saving is equal to the difference in the two percentages, or 8.730478 per cent, applied to the total of $3,499,578.36 or $305,529.92, as is shown in detail in column 9 of sheets 6 to 9 inclusive, and in summary in column 7 of sheet 1, which bears the heading, "Suburban relievable expenses." The corresponding figure for the four months ending December 31, 1954, is $105,179.54.

Exam. Fuller: Does that represent the net saving to the Milwaukee so far as the Union Station is concerned on that, if you did not have the suburban service?

The Witness: That is right. Exhibit No. 15, shows the use of index numbers the trends between the years 1940 and 1954 of commutation and multiple ride ticket fares, the respondent's costs for labor, fuel, and other materials, the cost of living, and the average hourly earnings for employees in all manufacturing industries in the United States.

Exam. Fuller: What exhibit are you talking about?

The Witness: Exhibit 15.

Mr. Merrill: While you are interrupted, sir, do you refer [fol. 179] to the commutation multiple ride ticket fares on the Milwaukee Road only?

The Witness: That is true.

Mr. Merrill: All right, sir.

The Witness: The sources are shown in the footnote. The base year is 1940.

Exam. Fuller: That 169 is based on present fares, is it not?

The Witness: That is true.

Exam. Fuller: Increase those fares 40 per cent, you would get higher than the cost of living index, would you not?

Mr. Merrill: 219, Mr. Examiner.

The Witness: Yes, it would 236.6.

Exam. Fuller: You are going to have a traffic man testify, are you not?

Mr. Merrill: Yes, sir.

By Mr. Merrill:

Q. In computing the figure you just gave, did you apply a 40 per cent increase?

A. Yes.

Q. With the hold-downs proposed by the railroads, would it—hold-downs on its commutation fares, would the increase requested actually equal 40 per cent?

A. No.

Mr. Merrill: We will have a traffic man, I believe, give a few more details on that, Mr. Examiner.

Exam. Fuller: Very well.

[fol. 180] The Witness: Suburban passenger fares were first increased effective April 25, 1945. That is after 1940. Other increases were effective November 1, 1947, May 7, 1948, and December 7, 1948, after which the index figure became 143. On September 21, 1951, an increase of about 18 per cent became effective which brought the index to 169, or 69 per cent above the 1940 level.

Exam. Fuller: Didn't we have a joint proceeding with the Illinois Commerce Commission then, 1951?

The Witness: Yes.

Exam. Fuller: Did we have a decision?

Mr. Merrill: That is correct, sir. That was the last pro-

ceeding. It was a joint proceeding, but the interstate phase of it was dismissed and the Illinois Commission granted the increases.

Exam. Fuller: So you did not have any report in our proceeding then.

Mr. Merrill: No, sir, no report issued in the Interstate Commerce Commission proceeding.

Exam. Fuller: Did that involve just commutation fares?

Mr. Merrill: My recollection is it involved all types of fares. At that time there was a two cent limitation under the Illinois law, and the position before the Interstate Commerce Commission was that the Illinois Commission cannot raise the one-way and round trip rates over two cents a mile, and the jurisdiction of the Interstate Commerce Commission was therefore, invoked.

Exam. Fuller: And then also——

[fol. 181] Mr. Merrill: We proposed also to raise our multiple fare and commutation tickets.

Exam. Fuller: But not your one-way and round trip.

Mr. Merrill: Yes, sir we did, and at that time, as I say, since our proposed increases in the one-way and round trip tickets would exceed two cents a mile, why a petition was also filed with the Interstate Commerce Commission in order to obtain the necessary relief.

It was the position of the railroad that the Illinois Commerce Commission was unable under the Illinois law to grant any rates in excess of two cents a mile.

Mr. Guthrie: The two cent law was repealed, while that case was pending, was it not?

Mr. Merrill: I believe so.

Mr. Guthrie: I believe that is why it was taken away. That is why you did not need the Interstate Commerce Commission anymore. I believe that is true.

Mr. Merrill: That could be because while I started in the case and attended the first hearing or two, I did not follow through with the case and another lawyer took it through.

Exam. Fuller: What was your one-way fare at that time?

Mr. Merrill: At that time?

Mr. Buthrie: I believe it was at the 1951 session of the Legislature the two cent law was repealed. That is probably why they went along only with the Illinois Commerce [fol. 182] Commission, because that gave the Illinois Commerce Commission authority to raise the fare over two cents, which they did. I could be wrong, but I do not think so.

Exam. Fuller: Well, the traffic man can explain that anyhow, can't he?

Mr. Merrill: Yes, we have the order of the Illinois Commission in that case right here.

Exam. Fuller: I have a file on it too, but I have forgotten just how it reads. Anyhow, I was very glad not to have to write a report.

Mr. Merrill: Just one additional comment on the Illinois case. The increases as granted however, did not apply to the one-way, round trip or multiple ride tickets. The increases were granted only on the commutation, the weekly and monthly tickets. You were correct, sir.

By Mr. Merrill:

Q. Do you wish to proceed, Mr. Stephenson?

A. In the 14 year span, railway wages increased 156 per cent, coal increased 118 per cent, diesel fuel, 97 per cent and other materials increased 142 per cent.

Cost of living, all items, increased 92 per cent during the 14 year period, while average hourly earnings in the manufacturing industry increased 172 per cent.

The latest increase in suburban fares, effective September 21, 1951, was authorized in Interstate Commerce Commission Docket No. 30765, Illinois Commerce Commission [fol. 183] Docket No. 38977, in which proceedings there were in evidence results of suburban operations for the year 1950.

Since 1950, the index figure for railway labor costs has increased from 210 to 256, and certain fringe benefits have been added, including:

Increase to four operating groups, of five cents per hour, retroactive to October 1, 1950; an increase of five cents per hour, effective January 1, 1951; an increase of two and

a half cents per hour, effective March 1, 1951; cost of living upward adjustments in 1951 of seven cents per hour.

Increase to non-operating groups of 12½ cents per hour effective February 1, 1951; cost of living upward adjustments in 1951 of seven cents per hour.

Cost of living adjustments to operating and non-operating groups in 1952, net increase seven cents per hour.

Productivity increase to operating and non-operating groups of four cents per hour, effective December 1, 1952.

Cost of living adjustments to operating and non-operating groups in 1953, net decrease one cent per hour.

Increase of five cents per hour to road and yard operating employees, effective December 16, 1953.

Third week of annual vacation with pay to employees having 15 or more years of service, effective January 1, 1954.

Pay for seven national holidays for non-operating employees, effective May 1, 1954, and health and welfare [fol. 184] program for same employees, effective February 1, 1955.

Amendments to Railroad Retirement, Railroad Retirement Taxing, and Railroad Unemployment Insurance acts, effective July 1, 1954. The amendments increased taxable employee earnings from $300 to $350 per month and increased the benefits payable under the acts.

Exam. Fuller: Can you give us a composite figure for those railroad cost indexes? A figure that would cover all the items, labor, coal and fuel supplies?

The Witness: We would be able to work it out. We could work it out.

Exam. Fuller: Would you take labor about two-thirds?

The Witness: Yes.

Exam. Fuller: See if you can do that before you get through.

The Witness: Yes.

Exam. Fuller: That would be what you might call the railroad's cost of living.

The Witness: That is right.

Mr. Merrill: Could we have a brief recess, Mr. Examiner, until I can determine whether I have any questions on further direct?

Exam. Fuller: We will take a short recess.

(Short recess.)

Exam. Fuller: On the record. The witness is temporarily excused.

[fol. 185] (Witness temporarily excused.)

J. K. Pain was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name and address, and occupation, please?

A. J. K. Pain, 702 Union Station, Chicago, and I am assistant general passenger agent for the Milwaukee Railroad.

Q. How long have you been employed by the Milwaukee Railroad?

A. A little over 37 years.

Q. Do you have jurisdiction over the publication of tariffs with the Passenger Traffic Department?

A. That is true.

Q. Have you prepared an exhibit to introduce in this proceeding?

A. I have, yes.

Q. This exhibit consists of one page entitled, "Present One-Way, Round Trip and Multiple Ride Fares between Stations in Chicago Suburban Districts, which has been identified as Exhibit No. 16.

(Respondent's Exhibit No. 16, Witness Pain, was marked for identification.)

Q. Have you prepared another exhibit showing the proposed fares?

A. Right.

Q. And is that the document which has been identified as Exhibit No. 17?

[fol. 186] A. That is correct.

(Respondents' Exhibit No. 17, Witness Pain, was marked for identification.)

Q. Is there any explanation which these exhibits require, Mr. Pain?

A. Well, I think they speak for themselves pretty well. Taking Exhibit No. 16, the schedule of the present fares, the North Line is listed first under the heading of, "Dubuque-Illinois Division."

Q. Excuse me. You say the North Line is listed first?

A. Yes. Oh, I am sorry, the West Line, yes, and the North Line is listed second under the heading of Milwaukee Division.

It shows each station in each district in geographical order, starting out with the distances from Chicago, shown in the first column. In the second column it shows the one-way coach fares followed by the round trip coach fares. Then the ten ride bearer tickets, 25 ride bearer tickets, 12 ride weekly individual tickets, 46 ride monthly tickets, and finally the unrestricted tickets. In each case the rate per ride is shown with the exception of the unrestricted, which, of course, has no limit to the rides.

Exam. Fuller: You are still operating under that 15 cent minimum?

The Witness: Yes, sir.

By Mr. Merrill:

Q. I notice, Mr. Pain that you do not show Western [fol. 187] Avenue on this exhibit which is the first station out of the Chicago Union Station.

A. That is true. That was omitted probably because there are no commutation fares applying to Western Avenue.

Exam. Fuller: What is that distance?

The Witness: Western Avenue is 3.1.

By Mr. Merrill:

Q. Will you state what the present one-way fare is to Western Avenue, please?

A. Fifteen cents.

Q. And the round trip?

A. Thirty cents.

Q. Will you state what the proposed one-way fare will be to Western Avenue?

A. It will be 25 cents.

Q. What is the proposed round trip?

A. Forty-five cents.

Exam. Fuller: Do you have any one-way or round trip actually traveled there?

The Witness: Yes, there is some.

Exam. Fuller: But you have no commutation charge?

The Witness: There is no commutation ticket in there. There is commutation travel in there though.

By Mr. Merrill:

Q. Does the railroad issue multiple ride tickets or commutation tickets to and from intermediate points, that is, not including the Chicago Union Station.

[fol. 188] A. No.

Q. In other words, the tickets are sold only to or from the Chicago Union Station. Is that correct?

A. Insofar as commutation.

Q. Yes.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

By Mr. Merrill:

Q. Would you make that statement again for the record, Mr. Pain?

A. Ten ride multiple tickets are available between intermediate stations, but 25-ride multiple tickets are available only to and from Chicago.

Exam. Fuller: And the 25 ride today is made 11½ times the one-way fare.

The Witness: Right.

By Mr. Merrill:

Q. You stated the 25 ride ticket is available only to or from Chicago and not between intermediate stations. Is that also true of the 12 ride weekly, 46 ride monthly and the unrestricted ride monthly tickets?

A. That is correct, yes.

Mr. Guthrie: Off the record.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. The 25 ride is 11 times [fol. 189] the round trip fare.

The Witness: Yes, that is right.

Mr. Guthrie: That is cleared up then.

By Mr. Merrill:

Q. Mr. Pain, have you made any study to determine the approximate increased revenue which the railroad would receive if it, if the increases requested in this proceeding are granted?

A. Yes, we have.

Q. Do you have that broken down by class of tickets?

A. I do, yes.

Q. Would you state the amounts for each class of ticket that the railroad would realize in increased revenues if the relief here under asked is granted?

A. You want this in revenue or percentages? It is estimated that on a yearly basis we would receive an increase of $72,989 on one-way tickets, $40,323 on round trip, $27,525 on ten ride, $118,336 on 25 ride, $87,001 on 12 ride, $169,084 on 46 ride, and $3,828 on the unrestricted.

Q. What does that total?

A. $518,089.

Mr. Guthrie: Increase?

Mr. Merrill: Increased revenues, yes, sir.

By Mr. Merrill:

Q. Have you made any computation as to what percentage the amount of $518,089 bears to your present revenues from the suburban service?

A. According to our tabulation here it amounts to 29.4 per cent.

[fol. 190] Exam. Fuller: Is he going to describe Exhibit 17 now?

Mr. Guthrie: What was that last question and answer, please.

(Record read.)

Exam. Fuller: Is this based on the 1954 volume?

The Witness: Yes, it is, the one-way and round trips revenues were based on the actual revenues for 1954. The multiple ride and 12, 46 and unrestricted commutation fares were based on the, using the month of September, 1954 as an example, and multiplying it by 12 to get the yearly total.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

By Mr. Merrill:

Q. Mr. Pain, in your experience is the month of September a fairly representative month of the volume of traffic handled by the railroad during the course of a year?

A. It is, yes.

Q. Will you please refer to Exhibit No. 17, and state what that exhibit purports to show?

A. No. 17, is drawn up on the same basis as Exhibit No. 16. It contains the same outline except that it shows the proposed fares and some of the present fares. Do you want me to repeat——

Q. It follows the same pattern as Exhibit No. 16, does it not?

A. That is correct.

Q. Now, you stated, Mr. Pain, that the amount of addi-

tional revenue which the proposed increases would bring [fol. 191] the railroad, represents approximately 29.4 per cent of our existing revenues. Now, will you please refer to Exhibit No. 15, introduced by Mr. Stephenson. Referring to the second column in the last line opposite the year 1954, it shows the index where the commutation and multiple ride ticket fares on the Milwaukee Railroad are 169. Now, will you please indicate the index figure if increased by 29.4 per cent?

A. I figure that to be 218.6.

Mr. Guthrie: That is the index figure on what?

Mr. Merrill: Exhibit 15.

Mr. Guthrie: Index figure would be increased from 169 to what?

Mr. Merrill: 218.6.

Exam. Fuller: Does he have the percentages available then by the different types of tickets?

Mr. Merrill: We have the amounts, Mr. Examiner. I will ask the witness if he has them in percentages.

A. I have them in percentages in revenue, yes.

Mr. Merrill: He has the present revenue from each ticket, the proposed revenue in each ticket, and the proposed increase in each type of ticket.

Exam. Fuller: I think he ought to give the percentages. That is what I want.

By Mr. Merrill:

Q. Mr. Pain, will you read the percentages represented by the additional revenue as compared to the present [fol. 192] revenue which the railroad seeks in this proceeding, per class of ticket.

A. For the one-way, 28.0.

Q. Per cent?

A. Yes, per cent. Round trip, 24.9; ten ride 25.7; 25 ride, 37.2; 12 ride, 24.9, 46 ride, 30.4; unrestricted, 29.9.

Exam. Fuller: Where did this 40 per cent come from?

Mr. Merrill: Forty per cent, Mr. Examiner, represents the increases in 12 ride, 46 ride, unrestricted monthly, for distances of approximately 21 miles, up to 21 miles. At

that point a hold-down is applied as stated in the petition, so that the overall increase on those types of tickets are lower than 40 per cent.

Exam. Fuller: That is just the commutation fares.

Mr. Merrill: That is correct, sir.

The Witness: That is only up to a certain distance.

Mr. Guthrie: Forty per cent increase in commutation fares up to 21 miles. Beyond that the percentage falls, so as to bring down your average. That is the way I understand it. Is that correct?

Mr. Merrill: That is correct, sir.

Mr. Guthrie: You are talking only about commutation fares in that.

Mr. Merrill: Yes. Now, the increase, if I may make the statement, Mr. Examiner, as applied to one-way fares is [fol. 193] generally a 28 per cent increase. That increases the present rate from 2.5 to 3.2. Is that correct, Mr. Pain?

The Witness: Correct.

Mr. Merrill: From 2.5 cents a mile to 3.2 cents a mile, and since a round trip is 90 per cent, or equals 180 per cent of a one-way ticket, then the increase in the round trip is lower than the increase in the one-way ticket.

Exam. Fuller: Of course, your proposed increase of the minimum comes in there too, does it not?

Mr. Merrill: Yes, sir, the minimum increases from 15 cents to 25 cents, and is applicable actually, only around ten miles' out that the proposed increase has any effect. Beyond ten miles, the present fares are in excess of the minimum.

Exam. Fuller: Then your ten ride is just five times the round trip fare.

Mr. Merrill: Yes, sir.

Exam. Fuller: So that does not differ very much from your round trip.

Mr. Merrill: That is correct, sir.

Exam. Fuller: Then on your 25 ride though, you are proposing in addition to the increase in one-way fare, changing the basis from 11½ to 12½.

Mr. Merrill: That is correct, sir, and that is in addition to the increase in the round trip fare, rather than as you said——→

Mr. Guthrie: 25 ride under the new system, Mr. Merrill, [fol. 194] would it?

Mr. Merrill: It would not, sir.

Exam. Fuller: Just a package round trip.

Mr. Guthrie: Package round trip.

Mr. Merrill: The same as the ten ride ticket, sir.

By Mr. Merrill:

Q. Is the railroad presently in competition in the City of Chicago, with the service of the Chicago Transit Authority?

A. Yes, we are.

Q. What type of service does the Chicago Transit Authority render around the area served by the Milwaukee Road Suburban service? Is it bus, streetcar or elevated service?

A. It is streetcar, bus.

Q. Surface line transportation?

A. Surface line transportation.

Q. Could you make a comparison of the time required on the Milwaukee Road from its suburban stations to and from the Chicago Union Station with that of the Chicago Transit Authority?

A. Yes, on points commonly served by our line as well as the Chicago Transit Authority, such as Healy, Grayland, Mayfare, Forest Glen, and Edgebrook, our service is anywhere from 24 minutes to 28 minutes faster than the CTA service.

Q. Do you know what the fare is presently on the Chicago Transit Authority buses and streetcars?

A. It is 20 cents.

[fol. 195] Q. Is there any lower cost for buying multiple fares or commutation tickets?

A. They have the one fare prevailing per ride, 20 cents per ride.

Q. There is no reduction then for purchasing more than one fare.

A. There is not.

Exam. Fuller: Have they abolished that token business?

The Witness: Yes, sir.

By Mr. Merrill:

Q. Are any station facilities provided for patrons of the Chicago Transit Authority that——

A. No, you mean shelters?

Q. Yes, shelters or station buildings.

A. Ordinarily, no, I don't think there are any.

Q. For streetcars and buses.

A. No.

Q. Mr. Pain, going to the outlying areas and to the suburban towns, is the Milwaukee Railroad in competition with any other railroad outside the city limits of Chicago?

A. Yes, on the North Line, we are in competition with the Chicago North Shore and Milwaukee from Northbrook and also in a way from Glenview, although their station is Glenaire, which is one and a half miles distant, distant from Glenview. From Northbrook our service is eight minutes faster, and from Glenview or their station of Glenaire, it is 11 minutes faster.

We also have some competition with the American Coach Bus Line.

Q. Excuse me, Mr. Pain. I am sorry. Go ahead, please. [fol. 196] A. We also are in competition with the American Coach Bus Company, to and from Morton Grove and Glenview, and our service to these points varies from 25 minutes to a half hour faster.

Then on the West Line, we commonly serve about six stations with the Chicago Transit Authority, such as Western Avenue, Hermosa, Cragin, Hanson Park, Galewood, Mars and Montclare. At Western Avenue or Hermosa, our service is approximately ten minutes faster than theirs, and up to more distant points, it is about half an hour, 30 minutes faster.

Then from Elgin, to and from Elgin, we have competition with the Chicago Aurora and Elgin Railroad, which connects at Forest Park with the Chicago Transit Authority bus. The Chicago Aurora & Elgin does not have through service.

Q. That is the elevated line, is it not?

A. Yes, that is right, Chicago Transit Authority elevated train. And our service there, is about 36 minutes faster than that combination of services.

Exam. Fuller: Do you have any competition with the Chicago Northwestern?

The Witness: No, sir, not in the suburban service.

By Mr. Merrill:

Q. Have you any figures showing comparitive fares via these competitive lines of transportation, other than the CTA which you have already named.

A. Yes, we have.

Q. Would you take some representative points and indi- [fol. 197] cate the comparitive fares as they now exist.

A. Well, take a point like Healy for example, which is relatively close by. The fare on the Chicago Transit Authority naturally is 20 cents, and our 46 ride ticket it is 16.7. Go out a little bit farther to Forest Glen, Edgebrook. Mayfair would be 20 cents, and our proposed fare would be 25 cents.

Q. In order to keep the record straight, Mr. Pain, will you make your comparisons of our present fares with those of the competitive transportation's present fares?

Mr. Guthrie: Mr. Merrill, just to keep the record straight, when he said 16.7 to Healy, is that the present fare or the proposed fare?

The Witness: That was the proposed fare.

By Mr. Merrill:

Q. Now I have asked for the time being, at least, to confine the comparisons to the present fares so the record will be clear.

A. Back to Healy, our fare would be for the 46 ride, would be 11.9 as compared with 20 cents on the CTA. At Mayfair, it would be 17.9 as compared to 20 cents. At Forest Glen we are just even. It is 20 cents for each for theirs as well as ours. Do you want to go any farther?

Q. I think that is representative of the North Line with the CTA. Would you point out the comparisons on the West Line?

A. The West Line, at Hermosa our fare is 11.9 per ride as against the CTA fare of 20 cents.

[fol. 198] Q. Again you are comparing the rate per ride under our 46 ride monthly ticket. Is that correct?

A. That is correct.

Q. All right, sir.

A. At Cargin again it is 13.0 as compared to 20 cents. Hanson Park it is 15.9, Galewood is 17.9, Mars is 17.9, all as compared with 20 cents on the Chicago Transit Authority vehicles.

Q. Now, will you proceed to show any comparisons you may have between fares on the Milwaukee Railroad and those on the other railroads or bus companies around the outlying towns beyond the city limits of Chicago?

A. Well, for example, take Morton Grove. The American Coach Bus Lines has a fare of 32 cents per ride.

Q. To Chicago?

A. Yes, to and from Chicago, and our present fare, you want the present fare, don't you?

Q. Yes.

A. Present fare is 25.0.

Q. Cents per ride?

A. A ride.

Q. Under the 46 ride ticket.

A. These are 46 ride.

Mr. Guthrie: These are all 46 ride, are they not?

The Witness: Yes, sir.

By Mr. Merrill:

Q. What is a comparitive fare with the Chicago North Shore and Milwaukee Railroad at Libertyville?

[fol. 199] A. At Libertyville,——

Q. If you have it.

A. I don't believe I have that.

Q. Have you the comparative fare from any other point?

A. I have it from Northbrook.

Q. Would you state what that is, please?

A. They have a 46 ride ticket at 42 cents per ride. Ours is 31.3 per ride.

Q. Did you draw a comparison with the cost per ride on the Chicago Aurora & Elgin, from Elgin to Chicago?

A. Yes.

Q. Including the cost for the CTA portion of the journey, with the cost on the Milwaukee Railroad.

A. Well, for an unrestricted ride, which I think they call their 60 ride ticket, it is 55 cents per ride from Elgin, to and from Elgin, and ours is 43.9. That includes the CTA fare.

Q. You included the CTA fare in the cost of the Chicago Aurora & Elgin ticket.

A. That is correct.

Q. Are there any other comparisons which you wish to make?

A. Well, there is some service, bus service in connection with the Chicago Transit Authority from and to Roselle, and Itasca. Roselle for example, the fare via that medium is 55 cents, and our fare is 34.4 per ride.

Mr. Gibbons: Pardon me, is that CAEM out of Elgin to Roselle?

[fol. 200] Mr. Guthrie: Not CAEM.

Mr. Gibbons: What is it?

The Witness: Roselle is Hayden Motor Coach Company and CTA service.

By Mr. Merrill:

Q. In your testimony, Mr. Pain, where you have discussed the comparative fares via the CTA and via the various motor coach lines, have you used the cheapest fare on the other lines for comparison with that of the Milwaukee?

A. That is true.

Q. Were Exhibits 16 and 17 prepared under your direct supervision?

A. They were.

Q. Are they true and correct?

A. They are.

Offers in Evidence

Mr. Merrill: That is all I have on direct evidence with this witness, Mr. Examiner. We would like to tender as Exhibits, 16 and 17.

Exam. Fuller: Any objection?

Mr. Guthrie: Well, I think we might as well wait for cross examination.

Mr. Merrill: The witness is also available for cross examination.

Exam. Fuller: Well, as to the exhibits, of course, they are the actual present and the actual proposed.

Mr. Guthrie: No, I have no objection to it.

Exam. Fuller: All right, 16 and 17 will be received.

[fol. 201] (Respondent's Exhibits Nos. 16 and 17, Witness Pain, were received in evidence.)

Exam. Fuller: I wonder if before the hearing closes you could give us a comparison with the Northwestern fares.

Mr. Merrill: For comparable mileage?

Exam. Fuller: I think both are in the form of a scale. Maybe that would be the best way to do it.

Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Merrill: We will furnish that in a further hearing of this case then.

The Witness: I have some Northwestern fares here.

Exam. Fuller: Let us have it in an exhibit, I think.

Mr. Merrill: All right, we will offer the complete comparison then. You may cross examine.

Mr. Guthrie: Aren't you going on with Mr. Stephenson?

Mr. Merrill: Yes, but I thought if you had cross examination, you might go ahead.

Mr. Guthrie: I prefer to defer the cross examination. There may not even be any.

Exam. Fuller: The witness is excused.

(Witness excused.)

Mr. Merrill: I understood Mr. O'Toole was to be present tomorrow morning for cross examination. Do you wish [fol. 202] Mr. Pain to be present for cross examination also?

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.
We will recall Mr. Stephenson.

R. S. Stephenson was recalled to the stand and testified further as follows:

Further direct examination.

By Mr. Merrill:

Q. Mr. Stephenson, will you please refer to your Exhibit No. 13-A, in which opposite line 7 you show certain total out-of-pocket expense figures and fully distributed expense figures for the four months ending December 31, 1954. Have you expanded those figures to a yearly basis?

A. I have, by multiplying the amount shown on line 7 by three, the amount being for the four months. The year figure on that basis for suburban out-of-pocket expenses, including solely related expenses would be $2,292,672. The fully distributed suburban expenses on an annual basis would be $3,058,569. I made no such computation with respect to the revenues because we do have the revenues for a full year.

Mr. Guthrie: Where are the revenues for the full year?
The Witness: The revenues for a full year are $1,833,252.

By Mr. Merrill:

Q. And those are actual revenues for the year 1954 as shown on Exhibit 12-A. Is that correct?

A. That is right.

[fol. 203] Q. Will you please refer to Exhibit 15,——

Exam. Fuller: Before he gets off those, is he going to show us how much he saved with this dieselization, on an annual basis?

Mr. Merrill: Well, that merely consists of subtracting one figure from the other and certainly we will be glad to have him do it if you want him to put it in the record.

Exam. Fuller: Can you do that?

The Witness: Yes, I don't know whether this is exactly

what you are after or not. We have the expenses for a year, part of which were steam and part diesel.

Exam. Fuller: Let us wait for the conference on that then.

By Mr. Merrill:

Q. Will you proceed to Exhibit No. 15, sir, and referring to the four items under Railway Cost, consisting of labor, coal, diesel fuel and other materials. Have you a composite index figure for the year 1954, for those four items?

A. I do.

Q. What is that figure?

A. The figure is 249.

Mr. Guthrie: What year is this?

The Witness: That is the index figure for all railway companies for the year 1954.

By Mr. Merrill:

Q. Will you state how you arrive at that figure, please?

A. We determined the relative percentages of total operating expenses, exclusive of depreciation of our four items of labor, coal, diesel fuel, and other materials being the remainder. The percentages were 65.17, .73, 4.39 and 29.17. [fol. 204] Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

The Witness: Applying 65.17 per cent to the index factor of 256, .73 to the index of 218 for coal, 4.39 per cent to the index of 197 for diesel fuel, 29.17 per cent to the index of 244 for other materials, it will be seen the composite index is 248.97, or 249.

Exam. Fuller: You have not worked out the corresponding figure for '49, have you?

The Witness: I am afraid I cannot do it without referring to the, or getting information from our office. I haven't a 1949 annual report here.

Exam. Fuller: Wasn't the case we had resulting in the last increase based on '49 cost figures?

The Witness: 1950, I believe. The case was decided in 1951.

Exam. Fuller: If it is based on '50 figures, that is the figure I want. See if you can get that for me too.

The Witness: Yes, sir.

Mr. Merrill: That completes this witness's testimony on direct at this time, and I would like to offer into evidence, Exhibits 8 through 15, inclusive.

Mr. Guthrie: Those are all the accounting exhibits, and I would like to suggest that ruling be reserved pending cross examination.

[fol. 205] Exam. Fuller: Yes. Is that all you have on direct?

Mr. Merrill: Yes, sir, I anticipated one more shipper intervenor who was going to be here today or tomorrow, but I will contact him and advise him that there will be no hearing tomorrow.

Exam. Fuller: He should show up Wednesday.

Mr. Merrill: If he can come Wednesday, if the Examiner is agreeable, I would like to put him on Wednesday.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

We will adjourn at this time, until Wednesday, at 10 o'clock for cross-examination of witnesses O'Toole and Pain, and following that will be a conference on the cost study presented by Mr. Stephenson, and his other statistical exhibits.

We will reconvene, Wednesday, April 20, at 10 o'clock a.m.

(Whereupon, at 4:20 p.m., an adjournment was taken until 10:00 a.m., Wednesday, April 20, 1955.)

[fol. 207] [Title omitted]

TRANSCRIPT OF HEARING—April 20, 1955

Met, pursuant to adjournment, at 10:00 o'clock a. m.

BEFORE:

BURTON FULLER, Examiner.

APPEARANCES:

(As heretofore noted.)

[fol. 209] PROCEEDINGS

Exam. Fuller: Let us come to order, gentlemen and proceed with the hearing.

Mr. Guthrie: Mr. O'Toole.

Mr. Merrill: He is available for cross examination.

O'TOOLE was recalled to the stand and testified further as follows:

Cross examination.

By Mr. Guthrie:

Q. You are the same witness who testified here on April 14, are you not, Mr. O'Toole?

A. That is right.

Q. You have been sworn.

A. Yes, sir.

Q. You are the general manager and have general jurisdiction over suburban service.

A. That is right.

Q. I believe you said that the diesel locomotives as originally used in suburban service in the spring of 1954, I think, and for sometime, were part of a pool revolving with the through service, and that that method was changed during the year. Is that correct?

A. That is right.

Q. When was that change made?

A. February 15, 1955.

Q. It was in, during 1954 the diesel locomotives used on [fol. 210] the suburban service were used both in through and in suburban service.

A. That is not entirely correct. The road diesels were used in through and suburban service. The road switchers were used exclusively in suburban service.

Q. Used also for switching, were they not?

A. No.

Q. You had 12 road diesels and six switchers. Is that not correct?

A. Road switchers, yes, that's right.

Q. And when you made your change in February, 1955, did you change the types of diesel locomotives used?

A. No.

Q. Still using 12 road diesels and six switchers?

A. That's right.

Q. The same ones that were used before?

A. That's right.

Q. Why did you make that change as to assign them wholly to suburban service?

A. We were not entirely satisfied with the performance of the road diesels in suburban service due to the fact that we did not feel that they got their proper maintenance and we had too many failures. So we decided that if we assign specific engines to the suburban service we could give them closer attention and better maintenance and follow their [fol. 211] failures closer than we could if they were used in dual service.

Q. Somewhat more efficient operation.

A. That is right.

Q. When did you first start using diesels in suburban service, Mr. O'Toole?

A. Well, we started experimenting as I recall, in January, 1954 with 1,000 horse power yard diesels that were equipped with boilers. We had two of them in the service. We found that they were not satisfactory and then we brought in four 1500 horse power road switchers and tried them.

Q. When was that?

A. Oh, that was done about, somewhere between April and June.

Q. All right.

A. And we found that they were not entirely satisfactory, so we gradually, from time to time, withdrew three of them and assigned them to other service, replacing them with road engines. At the present time we only have one of those 1500's in service.

Q. When did your suburban service become completely dieselized?

A. The latter part of August, 1954, as I recall.

Q. That is when you withdrew the four 1500 horse power yard engines and substituted, well, the 16 you now use. Is that correct?

A. No, we didn't withdraw them right on that date. We withdrew three of them, three of the four gradually between August and, oh, along about February, 1955.

[fol. 212] Q. The figure you gave us the other day is what you are using now, is it not, 12 road engines, the six switch engines, five 1750 horse power switch engines and the one 1500 horse power switch engine. That is what you are using now.

A. That's right.

Q. I think you used 16 in the service with standbys.

A. No, we use 18 in the service with no standbys. We use road engines too and throw them into suburban service for extra service when we have to hold a suburban engine overnight and can't take care of its turn.

Q. There must be something wrong with my notes, because according to my notes you said you were using 12 2,000 horse power road engines.

A. That's right.

Q. Five 1750 horsepower switch engines.

A. That's right.

Q. And one 1500 horse power switch engine.

A. That's right.

Q. That makes 18.

A. Yes.

Q. That is my mistake. Are those new locomotives? The diesel locomotives I am talking about.

A. The dates of construction are——

Q. Oh, that is set forth in Exhibit 8, is it not?

A. That's right.

[fol. 213] Q. So they date back, except the 1750 horse powers, were new last year.

A. That's right.

Q. And the others were purchased in '46 and '47. Have they been used in through service from the time they were purchased until they were put into suburban service?

A. Correct.

Q. What overhauling, if any, did you have to do with those locomotives when they were put into the suburban service?

A. We didn't do any overhauling with them.

Q. Just ordinary maintenance?

A. That's right.

Q. Mr. O'Toole, I think you said there was no joint or through, joint or mixed service on the West Line. That is, that the crew members that operate on the West Line suburban service operate exclusively in that service. Is that correct?

A. That's right.

Q. How about the North Line?

A. You have mixed service on the North Line.

Q. Will you explain that?

Mr. Merrill: Mr. Examiner, Mr. O'Toole went into that rather thoroughly on direct examination. I wonder if perhaps Mr. Guthrie could localize his question a little bit to what he has specifically in mind.

Mr. Guthrie: I will logalize it.

[fol. 214] By Mr. Guthrie:

Q. What you mean is that on certain runs the conductor, for example, will come into Chicago, *we* will in the morning, and get here at half past eight or nine o'clock and go out on a through run up to Milwaukee or some through run. He will come back and then go out again and go out on some suburban run at night. Is that what you mean by mixed service?

A. That's right.

Q. Why don't you have any of that on the West Line?

A. Because we only operate two passenger trains on the West Line, and——

Q. Through passenger trains?

A. That's right, in each direction, and we could not couple up the suburban conductors with the through trains.

Q. Do the people that work on the West Line have to stay on the West Line?

A. No,—yes, they have to stay on the West Line. The passenger crews operate between Chicago and Marion, Iowa. That is about 223 miles.

Q. Couldn't they be used on the North Line through trains?

A. No, sir.

Q. Why not?

A. Two separate seniority districts. The West Line men have no rights on the North Line territory. That belongs exclusively to the North Line people.

Q. They all work for the Milwaukee Railroad, don't they? [fol. 215] A. Yes, but you have a contract with the organization that dates back to the U. S. Railroad Administration in 1917-18, where the basic rules were established and we have had to live with them.

Q. The Milwaukee Railroad is unique in that respect, is it not?

A. No, I would not say so. That is a general practice followed by railroads, except where you have interdivisional runs where mileage is divided in through service.

Mr. Guthrie: That is all the cross examination at present.

Mr. Merrill: Mr. Examiner, I would like to—pardon me. Did you have some questions?

Mr. Gibbons: Yes, just a few.

By Mr. Gibbons:

Q. You testified that the 1500 horse power diesel was not adaptable to suburban service.

A. That's right. It doesn't work in a ring with the off peak trains and the on peak trains, and we found that it did not do business on the on peak trains.

Q. Would you explain a little bit more just what you mean by it does not do business with the on peak trains?

A. We had a lot of failures with them, and on suburban service you have a great many starts and stops. Our starts is where your traction motors get overheated because you are working the full amperage on your traction motors, and we had a lot of traction motor trouble, so-called ground relay trouble which is the high voltage line from the main [fol. 216] generator to the traction motor, and we just decided that they were not satisfactory in suburban service.

Q. In other words, they are just not powerful enough because of these frequent starts and stops.

A. That's right.

Q. Why is it you retain in the suburban service one 1500 horse power?

A. Because it is handling a lighter train and that only handles one train a day in each direction, and we figure that is one train it can handle.

Q. Are the 1750 horse powers satisfactory for suburban use?

A. For certain suburban use. The 1750 horse power engine that we have is a 75 mile an hour engine. We have some trains, as an example, a train that ru. from Healy to Round Lake first stop, and it operates in cab signal territory and reaches a speed of around anywhere from 78 to 85 miles an hour for several miles. Now, with the 75 mile an hour engine on that job, we had an awful time making the time.

Q. The majority of the suburban trains stop at most of the intermediate stations, do they not?

A. The local trains do, that's right.

Q. Did you testify that the 2,000 horse power diesels which are now in service on suburban operations had previously been in through service?

A. That's right.

[fol. 217] Q. Then what were they replaced with?

A. You mean when they were removed from through service?

Q. Yes.

A. The engines were made available by discontinuance of main line passenger train service, such as between, oh,

well, say Milwaukee and Madison, and between Canton and Mitchell. There has been a gradual reduction in main line passenger miles over the years since '46, and as you reduce the trains the engines become available.

Q. So, it was not necessary then to replace the engines that you removed from through service. Is that correct?

A. Well, it was necessary to replace them, but it was not necessary to replace them with all new engines.

Mr. Gibbons: That is all.

OFFERS IN EVIDENCE

Mr. Merrill: Mr. Examiner, I would like to offer into evidence, Exhibits 1 through 7, inclusive about which Mr. O'Toole testified in direct testimony.

Mr. Gibbons: No objection.

Mr. Guthrie: No objection.

Exam. Fuller: They will be received.

(Respondent's Exhibits 1 through 7, inclusive, Witness O'Toole, were received in evidence.)

Mr. Merrill: Do you want Mr. Pain next, Mr. Guthrie?

Mr. Guthrie: If you will just bear with me a minute, I may not even want Mr. Pain.

[fol. 218] Exam. Fuller: All right Mr. O'Toole, you are excused.

(Witness excused.)

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Merrill: Mr. Pain, please.

J. K. PAIN was recalled to the stand and testified further as follows:

Exam. Fuller: All right, you go ahead with those.

Mr. Merrill: I would like marked for identification, two exhibits, Mr. Examiner. The scale will be first, which will be Exhibit 18, and the other one is 19.

Exam. Fuller: They will be so marked.

(Respondent's Exhibits Nos. 18 and 19, Witness Pain, were marked for identification.)

Mr. Merrill: This will be further direct examination.

Further direct examination.

By Mr. Merrill:

Q. Mr. Pain, at the last hearing the Examiner requested an exhibit be presented showing a comparison of the respondent's suburban fares with those of the Chicago, Northwestern Railroad Company. Have you prepared such an exhibit?

A. I have.

Q. Referring you to the exhibit marked No. 18, will you please explain what that exhibit shows?

A. Exhibit No. 18 is a scale of fares for the 12 ride [fol. 219] weekly class, the 46 ride monthly and the unrestricted monthly classes on a mileage basis, showing the present basis of the Chicago Northwestern according to mileage, as compared with the present rate, or the present scale which exists for the Milwaukee Road.

Q. Will you please refer to Exhibit No. 19, and explain that exhibit, please.

A. Exhibit No. 19, is a scale, or a table of fares, including one-way coach, round trip coach fares, the ten and 25 ride bearer tickets, the 12 ride weekly commutation tickets, 46 ride monthly commutation tickets and the unrestricted commutation tickets, between Chicago and all stations in our suburban district.

Now, this table shows the fares which prevail at present on the Milwaukee Railroad, and also what the fare would be if the Chicago Northwestern basis was used. That was computed largely off of this mileage chart that was presented as Exhibit No. 18.

Q. Does that complete your explanation of Exhibit Nos. 18 and 19?

A. I believe it does.

Mr. Merrill: The witness is tendered for cross examination.

Cross examination.

By Mr. Guthrie:

Q. Mr. Pain, your Exhibit 19 shows the 12 ride, 46 ride and unrestricted mileage basis on the Northwestern, does it not?

A. Yes, sir.

Q. How did you, or where did you get those figures?

[fol. 220] A. Well, that was obtained off of this Exhibit No 18 here, which shows the Northwestern's scale per mile and our scale per mile.

Q. Well, 18 does not show the scale per mile, does it?

A. Yes, on distance, on the left hand column, the first column shows distance.

Q. I thought you said you prepared Exhibit 18 from Exhibit 19.

A. No, it was just the reverse, 19 was partially prepared from No. 18. That is insofar as——

Q. Let us go back to 18 then. Well, take Manheim 14.2 miles. Where did you get the Northwestern——

Mr. Merrill: Did you say 18?

Mr. Guthrie: No. 18.

Mr. Merrill: That is 19 you are referring to. Your numbers are turned around. That may be your difficulty.

Mr. Guthrie: I thought you said the longer sheet first.

Mr. Merrill: This one here, sir.

Mr. Guthrie: Now we are straight.

By Mr. Guthrie:

Q. You took—strike that. Where did you get the figures on Exhibit 18?

A. That was obtained from the orders that were issued by the Interstate Commerce Commission.

Q. In the case——

A. In the case that was heard.

Q. Interstate case or was it an Illinois case?

A. The Northwestern one was Interstate Commerce Commission.

[fol. 221] Mr. Merrill: What is the docket number on that proceeding?

The Witness: 60171.

Mr. Merrill: Excuse me, that reads Investigation and Suspension Docket 6017. That other one is a footnote.

The Witness: Yes, that's right.

Exam. Fuller: Prior to I&S 6017 your fares and those of the Northwestern were the same, were they not?

The Witness: I believe they were, relatively so.

Mr. Guthrie: Prior to when, sir?

Exam. Fuller: Prior to this I&S proceeding.

Mr. Guthrie: When was that order entered?

Mr. Merrill: It shows decided February 16, 1953.

By Mr. Guthrie:

Q. Where do you get your one-way fares for the Northwestern?

A. Well, in this same order here, the Northwestern——

Q. They are not shown on Exhibit 18, are they?

A. No, that was just the scale that was laid down by the Commission on those particular types of tickets.

Q. You quote them from that order?

A. The one-way fares were obtained from the order, yes.

Q. Round trip and ten rides?

A. They were based on the one-ways.

Mr. Guthrie: I think that is all.

By Mr. Gibbons:

Q. Would you state just how you determine the cost of the 12 ride weekly individual ticket?

[fol. 222] Mr. Merrill: On which railroad, Mr. Gibbons?

Mr. Gibbons: On the Milwaukee.

A. Well, those were obtained——

Exam. Fuller: You mean the fare?

Mr. Gibbons: Yes.

The Witness: Those were obtained from a scale which was given to us in this order by the Commission here, just what their pattern was. Why, I couldn't say.

Mr. Guthrie: You are talking about the Northwestern fares, are you not?

Mr. Gibbons: No, we are talking about the Milwaukee.

The Witness: Well, both of them were. They were both submitted by scales.

Mr. Gibbons: You are referring to the Interstate Commerce Commission order.

The Witness: That is correct.

Exam. Fuller: Generally speaking the 12 ride is 25 per cent of the unrestricted monthly.

The Witness: Yes, I think they use the unrestricted monthly as a basis for making the 12 ride.

By Mr. Gibbons:

Q. In your proposed bearer ticket, 25 ride bearer ticket, you compute that by taking 12½ times the cost of a round trip ticket.

A. Correct.

Q. Then the price per ride on a 25 ride ticket would be [fol. 223] exactly the same as the price per ride on round trip tickets.

A. Yes, or a ten ride, present ten ride.

Q. Isn't there supposed to be an inducement for purchasing a 25 ride ticket at a lower price? Isn't that one of the reasons why you have a 25 ride ticket?

A. Well, I don't believe that it is necessarily. We have reductions on the 12 and 46 and unrestricted. The 10 and 25 ride tickets are more or less a matter of convenience more than an inducement.

Q. Convenience to the railroad?

A. To the passenger.

Q. And to the passenger. If you refer to Exhibit 19, and under a ten ride bearer ticket showing the Chicago Northwestern basis, opposite Itasca, which is 21.2 miles, you have the figure 5.75.

A. Yes.

Q. Did you check that with any station that the Northwestern actually serves where the distance is 21 miles to see if that is actually the cost?

A. No, we took three cents a mile basis—in this case it would be 21 miles,—three cents a mile basis to determine the one-way fare, and the round trips were determined off of that.

Exam. Fuller: Is there a reduction on the Northwestern for a ten ride?

The Witness: No.

Exam. Fuller: It is five times the round trip.

[fol. 224] The Witness: Their one-way fare is higher that ours, you see, and the round trip would automatically be higher.

Exam. Fuller: It is five times the round trip.

The Witness: Yes.

By Mr. Gibbons:

Q. If I told you the actual cost of a ten ride bearer ticket on the Northwestern, from a station 21 miles distant from Chicago there is $5.50, would you agree or disagree with me?

A. I would probably agree with you because, as I say, we just took the 21 miles and multiplied it by three, which is the scale which the Northwestern have.

Q. So there might be a variation of 25 or 30 cents in these figures.

A. There could be some on some of those fares, yes, because our mileage wasn't the same in many cases with the Northwestern, and we could not compare it. Sometimes the fractions of a mile were dropped and so forth. That would make a difference of a few cents.

Q. Now, with respect to the proposed increase on the 12 ride weekly individual and the 46 ride monthly individual, the increase is 40 per cent up to 21 miles, I believe you testified, and then after that there is a decline in percentage increase so that with respect to the 12 ride ticket, it makes, well, the maximum is $1.60. Is that correct?

A. Yes, there is a ceiling on each class.

[fol. 225] Q. Well, isn't that discriminating agasint those who ride 21 miles or less and those who ride beyond the 21 miles?

A. No, I don't believe it is. It has been our thought it would be a discrimination against the long haul passenger to charge him at straight percentage. In fact, we felt we were preventing discrimination when we established that basis.

Q. In other words, did I understand you correctly to say

that the short haul passenger should pay more than the long haul passenger?

A. He should not pay more, no.

Exam. Fuller: He should pay more percentagewise.

The Witness: Percentagewise, yes, but not in dollars and cents. We were endeavoring to reframe from making the, from making it burdensome for the longer haul passenger.

By Mr. Gibbons:

Q. There is this difference between your proposal and the present Northwestern 25 ride, that the Northwestern 25 ride is based upon 11½ times round trip. Is that not correct?

A. Correct, sir.

Q. Did you testify that the annual increase under the proposed fares would amount to $518,089? Was that your testimony?

A. Yes.

Q. And that was based upon the figures of 1954, with the exception of commutation fares which were based upon your volume of business, your reference in September of 1954.

[fol. 226] A. Yes.

Q. And in making this estimate, you did not take into consideration the fact that in 1954 as compared with 1953 there had been a substantial increase in the number of passengers carried by the Milwaukee Road in suburban service, did you?

A. I don't quite understand your question.

Q. Well, let me phrase it this way. The testimony of another witness in another exhibit that there was quite a substantial increase in the number of suburban passengers carried by the Milwaukee Road.

Mr. Guthrie: Exhibit 10.

By Mr. Gibbons:

Q. My question is whether or not you took into consideration that further increase in 1955 following the pattern of

1954 in computing your estimated annual revenues under the proposed fares.

Mr. Merrill: Mr. Examiner, I would like to object to the question for this reason. That there has been no testimony in the record that I can recall of any increase in 1955.

Mr. Gibbons: There has not been anything in the record to show an increase in '55, but there has been in Exhibit 10, it shows a substantial increase in '54 as compared with 1953.

Mr. Merrill: Well, to save time Mr. Gibbons, I am perfectly willing to stipulate that the estimate of increased revenue was based entirely on the year of 1954.

Mr. Gibbons: All right, that is all.

[fol. 227] Mr. Guthrie: I think that Mr. Pain should be excused now. He should be subject to recall. He has brought in two exhibits based on an order which we have not had an opportunity to examine, and certain statistics of the Northwestern we might want to examine that might lead to certain other cross examination. I do not think of it now. In fact, I think it can be argued without cross examination, but he will be here in Chicago, I assume if we want to recall him.

Exam. Fuller: I would like to ask a question which is more or less the $64.00 question. I think you ought to explain a little more just why you are proposing these different bases and why you are proposing a higher basis than the Northwestern basis when you were at one time on the same basis.

A. Well, of course, I am not prepared to go into the cost or the expense. I believe there is a difference in the operation of the two roads. I think each road has a different,——

Exam. Fuller: I just wanted to ask that question from the standpoint of traffic.

The Witness: Well, I am really not prepared to go into the cost, as I say, or the expense. That is a little bit out of my line. But, the increase, of course, endeavored to be figured on the most equitable basis that would recover our losses. That is the only way I can answer it now. A basis that would be equitable, that would be fair to the suburban passenger.

Exam. Fuller: You said your increased revenue would [fol. 228] be $518,000.

The Witness: Yes, $518,000 in round figures.

Exam. Fuller: I believe the Northwestern's one way basis in the suburban area is three cents with a minimum of 20 cents.

The Witness: Yes.

Exam. Fuller: What are you proposing?

The Witness: We are proposing 3.2.

Exam. Fuller: With a minimum of 25 cents?

The Witness: Twenty-five cents.

Exam. Fuller: Why do you think you should get more from a traffic standpoint than the Northwestern?

The Witness: Well, is this off the record?

Exam. Fuller: No, I want this on the record.

The Witness: Well, I really couldn't— I don't know why we should get anymore unless probably our conditions are different on our railroad. We probably need more money. Need more revenue.

Exam. Fuller: Do you have quite a little traffic within the city?

The Witness: Yes, we do.

Exam. Fuller: You have some competition with the C.T.A.?

The Witness: Yes, that is when we serve points which the C.T.A. serves, but their competition isn't, you might say it isn't strong competition.

Exam. Fuller: What I am getting at is are you proposing [fol. 229] this 25 cent minimum with the thought that you can actually get a higher fare than the C.T.A. or the Northwestern?

The Witness: Well, we feel our service is vastly superior to that offered by the C.T.A. A matter of comfort, convenience and time.

Exam. Fuller: Do you partly have in mind that where the C.T.A. was of more convenience to the traveler to go by C.T.A. you would just as soon he go by C.T.A.?

The Witness: No, sir, definitely not. We feel that we are still in competition with the C.T.A., but we feel our service is vastly superior to what they have to offer.

Exam. Fuller: Don't you have a lot of people on your line, business people that do not travel every day but would

make use of a 25 ride ticket if you had it under the present discount, 11½ times?

The Witness: Well, it has always been our thought that the occasional traveler is more apt to use a 10 ride than a 25. That is just our thinking on it.

Exam. Fuller: Do you have any other explanation of the different treatment of these different fares? I notice you have considerably varying percentages.

The Witness: I did not quite understand, sir.

Exam. Fuller: Why did you pick out 40 per cent subject to a maximum of—what is the maximum?

The Witness: $1.60 on the 12.

[fol. 230] Exam. Fuller: And $6.40 on the——

The Witness: $1.60 on the 12; $5.75 on the 46; and $6.40 on the unrestricted. That is the ceiling. It is 40 cents up to this increase of $1.60 on one class, $5.75 and $6.40. That is the ceiling which is carried out for the remainder of the mileage.

Exam. Fuller: How did you arrive at that?

The Witness: Well, I can assure you it wasn't the first basis that was proposed. We gave this considerable thought, and it was felt, as I said, that this would be a fair increase and still recover some of our losses.

Exam. Fuller: You mean the f-a-r-e?

The Witness: I don't know what f-a-r-e is.

Exam. Fuller: Fare, which kind of fare are you talking about?

The Witness: Oh, f-a-i-r.

Exam. Fuller: I notice a trend that your suburban traffic has been up. Do you have any idea whether that trend is continuing now?

The Witness: We naturally hope it will, yes.

Exam. Fuller: Is there any more than a hope?

The Witness: Well, the record of these increases for the past 14 years, there has been more or less a steady increase in the number of passengers handled, and we have no reason to believe that that will decline, even with a fare increase.

Exam. Fuller: Well, so far as the nature of the suburban communities you serve, and the nature of your line—you [fol. 231] have two lines. The Northwestern has three, I understand. Your territory is pretty similar.

The Witness: Well, in what respect, sir? You mean geographically or in operation, or what?

Exam. Fuller: I am just talking about the nature of the suburban community.

The Witness: Yes, you could probably say there is strong similarity.

Exam. Fuller: That is all I have. Are there any other questions now?

Mr. Gibbons: Mr. Examiner, I wonder if we could have an exhibit showing comparison of fares between two other suburban operations, namely, the CB&Q and the Rock Island. Do you think that would be helpful in this case?

Mr. Merrill: May I make a comment here, Mr. Examiner. It is our contention that we are not serving the same territory as the two railroads named by Mr. Gibbons. Further, those fares, I believe, are on file with the Illinois Commerce Commission. We do not volunteer to offer them as any comparison of our own fares. We do not offer these Northwestern fares as a criteria of what our fare should be. These exhibits are offered solely in response to the Examiner's request. So before imposing a burden upon the railroad to offer the comparison with the other railroads, I would ask the Examiner to keep those points in mind.

Exam. Fuller: This is enough for my purpose.

[fol. 232] Mr. Guthrie: We had in mind, incidentally, ourselves investigating some of the other records as long as the Northwestern has been dragged in here, because there is no reason why the Northwestern alone should be considered, which has been treated, at least by the Commission, as being in a different class. I believe it is the highest rate of any, any suburban service in Chicago, the Northwestern. I think that is true.

Mr. Merrill: I believe Mr. Guthrie is mistaken, because both the Illinois Central and the South Shore Railroads are as high or higher than the Northwestern.

Mr. Guthrie: I am talking about comparable railroads.

Exam. Fuller: Some of that can be obtained from prior cases, and then the other comparison, I think you folks can show.

Mr. Guthrie: We can bring it in if we wish ourselves.

Exam. Fuller: Yes, I think that is all I will require of them.

Mr. Guthrie: When I said the Northwestern, I do not regard the South Shore and Illinois Central as comparable operations at all. The Illinois Central is like the elevated railroad of the city or something.

Exam. Fuller: Is that all now?

OFFERS IN EVIDENCE

Mr. Merrill: Mr. Examiner, we offer exhibits 18 and 19, but we wish to make our position clear, that we do not offer them as a criteria of what our fares should be, or as any suggestion on our part that these are the fares that the Milwaukee Road desires in its operation. The exhibits are offered solely in response to the Examiner's request.

[fol. 233] Exam. Fuller: I understand that, but they are offered to show the facts therein contained.

Mr. Merrill: In that respect they are offered as a true and correct showing, to the best of our ability, of the facts therein stated.

Exam. Fuller: All right, they will be received.

(Respondent's Exhibits Nos. 18 and 19, Witness Pain, were received in evidence.)

Exam. Fuller: Is that all?

Mr. Merrill: Yes.

Exam. Fuller: You are excused.

(Witness excused.)

Mr. Merrill: At this point, Mr. Examiner, you directed some questions to the witness as to the reasons for the fares which we propose. If you desire to direct the question to counsel, counsel would be glad to make a statement of the position of the respondent in that respect. I feel it goes to our theory of the case, as well as to the merits and if you are interested in it, why I would be glad to make the statement on the record.

Exam. Fuller: I was asking him from a traffic standpoint.

Mr. Merrill: I know it was directed toward the traffic standpoint, and we can cover it on brief or argument as well as by counsel, unless you desire to have it on the record now.

Mr. Guthrie: Possibly brief or argument is the best place [fol. 234] to cover it.

Exam. Fuller: Maybe you can have a summary at the end or something. I don't think we need it now.

Mr. Merrill: All right, sir. We have one witness remaining for cross examination who is present today.

Mr. Guthrie: We do not propose to cross examine him today.

Mr. Merrill: It was my understanding he was not going to be cross examined, however, he is available if they wish him.

Exam. Fuller: Is that all the available information you were to offer now?

Mr. Merrill: This witness has the comparison of the costs with 1950 verses 1954 that you requested.

Exam. Fuller: Let us get that in.

Mr. Merrill: I call Mr. Stephenson.

R. S. Stephenson was recalled to the stand and testified further as follows:

Further direct examination.

By Mr. Merrill:

Q. You have been previously sworn, have you not, Mr. Stephenson?

A. I have.

Q. At the last hearing, Mr. Stephenson, the Examiner requested an additional figure, percentage figure in connection with your exhibit No. 15. Will you state what the request was and what the figure is, please?

A. The request was to determine what the overall index [fol. 235] figure of railway cost was for the year 1950. We determined that figure in the same way as the figure was determined for the year 1954, by first developing the per cent labor was of total operating expenses, exclusive of depreciation, the percentage of coal of total operating expenses less depreciation, the per cent diesel fuel was of the similar total figure of operating expenses and other materials to the total operating expenses.

The percentages in 1950 were 65.30 per cent for labor, 5.62 per cent for coal, 2.41 per cent for diesel fuel, and 26.67 per cent for other materials. Applying these percentages to the index figures for the year 1950, we have 65.30 per cent of an index figure of 210 for labor, a percentage of 5.62 applied against an index figure of 223 for coal, a percentage figure of 2.41 applied to an index figure of 191 for diesel fuel, and a percentage figure of 26.67 applied to an index figure of 223 for other materials, when combined produces an index figure of 213.73. This compares with an index figure of 248.97 for the year 1954.

Exam. Fuller: 1954 then would be a fraction less than 20 percent higher than 1950.

The Witness: It is actually 16½ per cent.

Mr. Merrill: That is all, sir.

Mr. Guthrie: No cross examination now, just one question I will ask you. The precentage of coal has dropped between 1950 and 1954, it dropped from 5.62 to .73 of a per cent. Is [fol. 236] that right? In 1954, according to my figure here.

The Witness: Yes, the percentage in 1950 for coal was 5.62 per cent of the total operating expenses less depreciation. In 1954 the percentage was .73.

Mr. Guthrie: It has dropped practically to zero for this year has it not?

The Witness: It has.

Mr. Gibbons: One question. Is this correct then that from 1950 to 1954, railway costs have increased by approximately 16 per cent? Is that correct?

The Witness: The change in the index figures would indicate that. There are other things to be considered besides, I suppose.

Mr. Gibbons: And the change in the index figures in the cost of railway fares, that is suburban fares, was 18 per cent. Is that correct?

The Witness: About 18 per cent.

Mr. Gibbons: That is all.

Mr. Merrill: Based upon 1940, Mr. Stephenson, have the fares kept pace with the increased cost?

Mr. Guthrie: Just a minute. I object to that. Let him give the figures on which he bases it, not just the conclusion.

Mr. Merrill: Refer to Exhibit No. 10 and explain your answer from the exhibit.

Mr. Guthrie: He has not answered.

[fol. 237] Mr. Merrill: He will if you give him a chance.

Mr. Guthrie: I object to it.

Exam. Fuller: I think that is argument.

Mr. Merrill: You think it is argument, sir?

Exam. Fuller: I think so.

Mr. Merrill: All right, sir, that is all.

Exam. Fuller: You are excused.

(Witness excused.)

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

The hearing in this matter will be adjourned at this time to Monday, May 16, 1955 at 10:00 a. m., 160 North LaSalle. We will adjourn now to have our conference.

(Whereupon, at 11:45 a. m., the hearing in the above-entitled matter was adjourned to Monday, May 16, 1955, at 10:00 o'clock a. m.)

[fol. 239] Transcript of Hearing—May 16, 1955

[Title omitted]

Met, pursuant to adjournment, at 10:00 o'clock, a.m.

Before:

Burton. Fuller, Examiner.

Appearances:

(Same as heretofore noted.)

[fol. 241] Proceedings

Exam. Fuller: Come to order, gentlemen.

Let us proceed.

Mr. Merrill: Mr. Pain.

J. K. PAIN was recalled to the stand, and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name please?

A. J. K. Pain.

Q. Are you the Mr. Pain who previously testified in this proceeding?

A. I am.

Q. Mr. Pain, on page 115 and 116 of the transcript of the hearing on April 20, 1955, the question was raised as to the fare from Chicago to Itasca for a ten ride bearer ticket if placed on the Chicago and Northwestern basis? You testified that on the Northwestern basis the fare would be $5.75. The question was raised if it was not a fact that to a station on the Northwestern of comparable distance the actual fare for a ten ride ticket is only $5.50. Since that hearing have you had a chance to investigate concerning the fares on the Northwestern to a station of comparable distance to that of Itasca?

A. Since the last session I have had the opportunity to examine Chicago and Northwestern Railway Tariff No. 56-M-31CC No. 7845, and I found that a station on the [fol. 242] Northwestern, Ravinna Park is 21.2 miles from Chicago, and the rate shown therein is $5.75 for a ten ride ticket, which station is exactly the same mileage as Itasca, 21.2 miles.

Q. What is the fare to Itasca for that ticket?

A. Our fare is $5.00.

Mr. Guthrie: You mean your present fare?

The Witness: Present fare.

Exam. Fuller: Are some of these differences due to the computing of fractions?

The Witness: Well, in comparing our fares with the Northwestern on that exhibit, we didn't find any differences at all. Comparing station for station, Northwestern stations compared with one of our stations that have exact mileage, the fares have been just as shown on the exhibit.

Exam. Fuller: I just wondered what is the basis for that fare you mentioned.

The Witness: That is five times the round trip fare, that is the ten ride.

Exam. Fuller: That is really approximately three cents a mile less ten per cent.

The Witness: Yes.

Exam. Fuller: That is all.

Mr. Merrill: That is all. Thank you.

Exam. Fuller: You are excused.

(Witness excused.)

[fol. 243] Mr. Merrill: I will now tender Mr. Stephenson for cross examination.

Exam. Fuller: Off the record a minute.

(Discussion off the record.)

Exam. Fuller: On the record.

Let us proceed. Mr. Stephenson, will you resume the stand?

RALPH S. STEPHENSON resumed the stand and testified further as follows:

Cross examination.

By Mr. Guthrie:

Q. State your name, please.

A. Ralph S. Stephenson.

Q. Mr. Stephenson, this is cross examination. You testified on direct examination before in this case.

A. That is true.

Q. And you have been sworn.

A. I have been sworn.

Q. Mr. Stephenson, will you take your sheet of, or your set of exhibits so we can refer to them?

A. I have them.

Q. Calling your attention to Exhibit No. 9, that shows the statistical data with respect to cars in suburban service, does it not?

A. It does.

Q. All the passenger cars were built between 1903 and 1915, were they not?

[fol. 244] A. That is the original day of construction as shown in column 2.

Q. What is your rate of depreciation?

A. The present rates vary from 1.70 to 3.18 per cent.

Q. They are substantially fully depreciated, are they not?

A. The ones that are fully depreciated are indicated by a dash in column 7.

Q. I believe you testified that you consider them fully depreciated when the amount of the value left after taking off the depreciation is equal to the scrap value. Is that not a correct statement, sir?

A. Yes, salvage value let us say, not scrap.

Q. Well, salvage, which is in the neighborhood of a thousand dollars a car, is it not? Take your fourth and fifth cars which apparently are fully depreciated. Take your second car and your fourth and fifth. The difference is about a thousand dollars in each case, is it not?

A. That is true.

Q. If you look down the list I think you will see that that is a fair approximation. A little more than a thousand in most cases.

A. In the neighborhood of a thousand dollars.

Q. So as long as these cars are used the amount of your annual depreciation on the cars is going to decrease very rapidly, is it not?

A. I don't know that I understand your question.

Q. Well, I mean, the number of cars added each year [fol. 245] that are fully depreciated—strike that. There will be a considerable number of cars added to the fully depreciated list each year.

A. As time goes on, more will be added. I don't know just how many or how frequently.

Q. For example, take line 27. You have about one or two more years of depreciation.

A. About three years.

Q. That is what I mean. When it gets down to about a thousand dollars difference, why then it is struck off the

list. I do not have to go through them all. Off the depreciation list I mean.

A. No, that isn't true, Mr. Guthrie. They are not struck off the list because we are on a group basis.

Q. It is not further depreciated however.

A. No, that isn't so, Mr. Guthrie. We continue to apply depreciation just as long as the cars are in service under the Interstate Commerce Commission method of computing depreciation on a group basis.

Q. Let us take your list here. The second car on the list, annual depreciation nothing.

A. For the purpose of this statement they are fully depreciated, yes, sir.

Exam. Fuller: Well, for the purpose of this statement there will be others added.

The Witness: As time goes on, yes, sir.

Exam. Fuller: Some of them in two or three years.

[fol. 246] The Witness: That's right.

By Mr. Guthrie:

Q. Turning to Exhibit No. 10, please, sir. Just to show how little I know, I want to know what the difference is between commutation and multiple ride tickets.

A. Well, a commutation ticket may be defined as a ticket for transportation at a reduced rate for a certain number of trips, or for daily trips between specified places.

Q. All right, what is a multiple ride ticket?

A. A multiple ride ticket is one which is not restricted as to use. It covers a certain number of rides between specified points.

Q. As a matter of fact, the word commutation is frequently used to conclude both, is it not?

A. I believe the Interstate Commerce Commission makes the distinction.

Q. I think in some of your exhibits, commutation is used to include both.

A. It could be, yes.

Exam. Fuller: Commutation tickets generally refer to tickets sold on a monthly or weekly basis and with a diminishing rate of progression.

Q. I notice without trying to pick them out now, they say one-way fares and commutation, referring obviously to multiple rides too, frequently used, at least locally, that way.

A. It could be.

Q. Now, looking at Exhibit No. 10, shows us the number [fol. 247] of passengers carried from 1940 to 1954, carried annually, does it not? At least that is what it says in the sixth column.

A. Yes, there is a greater number in 1954 than in 1940.

Q. As a matter of fact, strictly speaking, that is the number of rides sold, is it not?

A. Roughly that is, yes.

Q. I mean it is a count of rides sold rather than a count of passengers.

A. That's right.

Q. Now, I want to draw your attention, and you will remember we discussed this in the other case, to the difference between 1948 and 1949—rather, 1948 and 1950 where there was apparently a decline. That was due, was it not, to the substitution of the 46 ride tickets in many instances for tickets theretofore, 54 ride.

A. Yes, that came about in 1948.

Q. So that it was not an actual decline in number of passengers, but a passenger could ride for a month with a 46 ride instead of a 54 ride, so he did not get as many rides into the statistics. Is that not so?

A. There is a little question about that, of course. We don't know whether——

Q. I believe that is what you testified to in the last case. I don't know exactly. I couldn't find it.

A. In other words, there was a five day week generally in vogue in 1948. We don't know how many of the 54 ride the passengers were using then.

[fol. 248] Q. The people that took 46 ride tickets, before that time had to take 54. Even without adjustment, of course, the increase in number of passengers as shown by this exhibit, is about 100 per cent almost exactly in the 14 year period.

A. That is right.

Q. If we allow for the difference in the tickets, it would have been considerably more—some more. I will strike out considerably. What are the suburban termini of your present West and North lines?

A. On the West Line is Chicago to Elgin, and the North Line, Chicago to Walworth, Wisconsin.

Q. As a matter of fact, there is only one train a day that goes to Walworth. Is that not right?

A. Yes, that's right.

Q. The terminus of the other trains, well, most of them at least, nearly all of them is Fox Lake, is it not? It is not beyond Fox Lake. It is mostly Fox Lake.

A. Fox Lake, yes, sir.

Q. In the prior case, which I will call the 1952 case, Illinois Commerce Commision No. 40486——

A. I have one here.

Q. Will you look at your Exhibit 9 there, please.

A. Yes.

Q. What is the terminus of your North Line shown in Milwaukee, St. Paul & Pacific territory on that map?

[fol. 249] Mr. Merrill: That question, Mr. Examiner, is objected to. Mr. Guthrie is referring to a map which was offered to show all the forms of transportation in the Chicago suburban service, suburban territory. It does show the Milwaukee line only as far as Fox Lake, but it was never offered to show the suburban territory in its entirety served by the Milwaukee Railroad. It was not even this witness's exhibit by the way.

Mr. Guthrie: It was the Chicago, Milwaukee St. Paul and Pacific exhibit. I did not know each exhibit was owned by a particular witness.

Mr. Merrill: Exhibit No. 1 in that case was offered to show the suburban territory served by the Milwaukee Railroad.

Mr. Guthrie: The caption on the exhibit, Mr. Stephenson, says Map Showing Passengers Carried in CMSt.P&P Suburban Territory. Passenger carriers, I should say, in CMSt.P&P Suburban Territory. Isn't that the caption on it?

A. The caption is, Map Showing Passenger Carriers in CMSt.P&P Suburban Territory.

Mr. Guthrie: I call the Examiner's attention to the fact that the petition in this pending case we are now hearing refers and asks only for relief with respect to intrastate fares.

Mr. Merrill: Mr. Guthrie, are you referring to the case we are hearing today or the case to which——

Mr. Guthrie: Yes, the case we are hearing today.

Mr. Merrill: Mr. Examiner, I think that is a misstate-
[fol. 250] ment of what the prayer of the petitioner is. We ask for relief both as to interstate and intrastate fares. The prayer is very clear in that regard.

Mr. Guthrie: But the body of the petition refers only to intrastate fares.

Mr. Merrill: Mr. Guthrie, the body of the petition refers to both types of fares and so does the prayer of the petition.

Exam. Fuller: I think the Order also refers to both interstate and intrastate.

Mr. Merrill: Yes, sir, the Order covers both types of fares, as well. Of course, I don't think there is any difficulty put between the parties. The interstate is relatively small.

Mr. Guthrie: The interstate amounts to relatively little. That is all I want to bring out.

Exam. Fuller: Have we any figures to show the division as far as the proposed increases are concerned?

Mr. Merrill: We did not make a breakdown.

Exam. Fuller: You might get us that before we get through.

Mr. Merrill: Only as to type of ticket was the only breakdown we made.

Exam. Fuller: Will you be able to do that before we get through?

Mr. Merrill: It is a pretty extensive undertaking, Mr. Fuller. Could we go off the record, sir?

Exam. Fuller: Off the record.

[fol. 251] (Discussion off the record.)

Exam. Fuller: On the record.

Let the record show the respondent will try to give us some kind of estimate at division between interstate and intrastate.

By Mr. Guthrie:

Q. Mr. Stephenson, will you please look at Exhibit No. 11. I am talking, of course, in the pending case now. That purports to give the statistics of suburban operations for 1954, does it not?

A. It does.

Q. How are the expenses and revenues per train mile computed?

A. The operating expenses and taxes are divided by the number of train miles to develop the average per train mile.

Q. Train miles are 757,845, are they not?

A. That's right, shown on line 33.

Q. What is the sum of the operating expenses of taxes, as you computed them?

Exam. Fuller: Are those expenses and revenues based upon Exhibits 12, 13 and 14?

The Witness: They are, yes, sir.

By Mr. Guthrie:

Q. Based on Exhibit 12, is it not?

A. 12 and 13.

Q. Is 13 used at all in those statistics?

A. Yes.

Q. What is the figure used? We could not make it check, frankly Mr. Stephenson. That is why I am asking these questions.

[fol. 252] A. The figures are made up this way. I am referring to line 39 of Exhibit 11.

Q. Yes.

A. The dividend is made up of the amount of operating expenses and taxes shown on line 7 of Exhibit 12-A, column 4.

Q. That is for the fully distributed?

A. That's right, $3,306,032, plus the amount shown in

Exhibit 14—not 13—line 16, $618,889, the total of the two amounts being $3,924,921.

Q. That is your fully distributed. How about the out of pocket?

A. To complete the calculation, $3,924,921, divided by 757,845 train miles produces $5.18 per train mile.

Q. Divided by 757,845 train miles.

A. That's right.

Q. That is what I wanted to know, how you did it. You used the similar method for the out of pocket, I suppose.

A. Yes, the respective amounts are $2,511,544, and $305,529.

Q. $2,817,073, is that right for the total?

A. $2,817,073.

Q. Then you divided 757,845 into that to get your——

A. $3.72 appearing on line 40.

Q. Now, you did not use Exhibit 13, representing the last four months of 1954 at all in computing the statistical data on Exhibit No. 11. Is that correct?

A. Except as the four months were included in the year, of course.

[fol. 253] Q. You did not use Exhibit 13, the separate itemization.

A. No.

Q. You used Exhibit 12 for the operating expenses exclusive of Union Station, and Exhibit 14 for the operating expenses of Union Station. Your share of it, I mean.

A. Right.

Q. Now, if you will, please, also give me your sources of revenue figures. I would like to know,——

Mr. Merrill: Which item are you referring to specifically, Mr. Guthrie?

By Mr. Guthrie:

Q. Well, the revenues I assume, are also revenues divided by train miles. Is that not correct?

A. Yes, you are referring, I presume to line 38 of Exhibit 11, $2.42.

Q. Yes, revenues per train mile. I am trying to get the source of that too.

A. Yes, that is produced by dividing the number of train miles appearing on line 33, 757,845 into the total suburban revenue appearing on line 14, column 4 of Exhibit No. 12, the amount being $1,633,252.

Q. And, of course, that is the same—that is all in pocket as a matter of fact. That is revenue.

A. That's right.

Q. Now, as a matter of fact, Mr. Stephenson, the expense statistics do not represent the expenses of operation, pres-
[fol. 254] ent method of operation, do they?

A. What period do you refer to? I suppose you refer to the year 1954.

Q. I mean for the year 1954.

A. We have already testified that during a portion of the year 1954, the trains were propelled by steam locomotives and during the last four months the trains were all entirely by diesel locomotives.

Q. So that in measuring your present expenses of operation, the figures in Exhibit 11, as to expense cannot be used, can they?

A. They can be used for the year 1954.

Q. I say in measuring your present expenses of operation for 1955, and subsequent years, is what we are really interested in, they do not indicate what the expenses will be, do they?

A. Not entirely, no.

Q. I believe that at our conference the other day at which you were present, it was suggested and acquiesced in by everyone as to maintenance of way and structures you use Exhibit 13 showing the entire expense of the year 1954. As to the other items we would best take three times the amount shown in Exhibit 13, as a general rule. Isn't that correct? That is my remembrance of the statement that was made. There may be some minor exceptions, but as a general rule is that not correct?

A. I think you would get nearer to the present operation on that basis, yes.

Exam. Fuller: I think the way we put it was that the
[fol. 255] expenses not affected by dieselization, the annual figures in Exhibit 12 could be shown. The expenses

affected by dieselization, three times the figures shown in Exhibit 13.

Mr. Guthrie: And we used as a sort of rule of thumb, we'd use maintenance of way and structures, of Exhibit 12, and others, of Exhibit 13.

Exam. Fuller: Yes, maintenance of way and structures would be the principal expenses not affected by dieselization.

Mr. Guthrie: Yes.

Exam. Fuller: All right.

By Mr. Guthrie:

Q. Now, Exhibit 13 gives the statistics for expenses and revenues for the last four months, September to December, does it not?

A. Yes.

Q. Of 1954, of course.

A. Yes.

Mr. Guthrie: Now, if the Examiner please, we shall at this time have identified some of the material from the 1952 case before the Illinois Commerce Commission so it can be referred to. I would like the Order marked in that case as Protestant's Exhibit 20.

Exam. Fuller: The Order in Docket No. 40486 of the Illinois Commerce Commission will be identified as Protestant's Exhibit No. 20.

(Protestant's Exhibit No. 20, submitted by Mr. Guthrie, was marked for identification.)

[fol. 256] Mr. Guthrie: We also have here certain exhibits in the 1952 case which we will ask to have identified as Protestant's Exhibit 21, and I will recite what those exhibits are. Off the record, please.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Guthrie: These exhibits in the 1952 case, Illinois Commerce Commission, 49496, are as follows: Petitioner's Exhibit No. 20, Statistics of Suburban Operation in the

Chicago Area, First Six Months, 1952. Petitioner's Exhibit No. 21,— These exhibits were introduced in the 1952 case, In the Matter of Application of Chicago, Milwaukee St. Paul and Pacific Railroad Company, for authority to discontinue and to consolidate certain suburban trains and to increase one-way, round trip and commutation fares in suburban service.

Now, Petitioner's Exhibit 21, Summary Statement of Ticket Sales and Revenue for the Month of June, 1952, consisting of 11 sheets.

Mr. Merrill: Excuse me, Mr. Guthrie, what is the last exhibit to be marked Exhibit 22 in the present proceeding? Is this last exhibit to be marked 22 for this case?

Mr. Guthrie: No.

Mr. Merrill: They all will be marked as one exhibit?

Mr. Guthrie: All be marked as one exhibit.

Mr. Merrill: Thank you, sir.

[fol. 257] Mr. Guthrie: Petitioner's Exhibit 22,—maybe after each one of these I should say the 1952 case,—Statement of Ticket Refunds and Amount in Chicago Area for the Month of June, 1953, consisting of three sheets.

Petitioner's Exhibit 23, in the 1952 case, being a tabulation of Cash Fares Collected Within Chicago Suburban Territory for the First Six Months of 1952.

Petitioner's Exhibit 24, in the 1952 case, being a statement of Non-Revenue Passengers Using Chicago Suburban trains.

Petitioner's Exhibit No. 25, as corrected by the Petitioner. There were two offered, one was the original one and then they offered a corrected one. This is the corrected one consisting of three sheets.

Exam. Fuller: You do not think it is necessary to have the original?

Mr. Guthrie: I think we will produce the original, but they did not offer it in evidence. We offered it in evidence. In fact, I think it should have been in here but it is not here.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Guthrie: The exhibit identified originally by the petitioner as Exhibit No. 25 in the 1952 case, which was put into evidence in that case as Protestant's Exhibit Q2. The petitioner offered—the petitioner did not offer it. They withdrew it. The title is the same as the corrected [fol. 258] Exhibit 25. Both of them consist of three pages.

Off the record.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Guthrie: The Prepared Testimony of R. A. Stephenson in Explanation of Chicago Union Station Expenses, Shown in Exhibits 25 and 32, consisting of six pages. When I refer to Exhibits 25 and 32, I mean the 1952 case.

Petitioner's Exhibit No. 26 in the 1952 case, being a statement of Method Used in Determining Revenues and Expenses in Exhibit 25 in that case, consisting of 15 pages.

The document identified as Exhibit No. 29 in the 1952 case, being Apportionment of Investment, Interest and Taxes to Suburban Service—Period January 1, 1952 to June 30, 1952, Inclusive, of Chicago Union Station Company, consisting of three sheets which was introduced in evidence in that case as Protestant's Exhibit Q1.

The document identified as Petitioner's Exhibit No. 30, in the 1952 case, being an Estimate of Operating Expenses Assignable to Suburban Service for the first six months of 1952, consisting of three sheets—consisting of four sheets rather, which was offered in evidence in the 1952 case as Protestant's Exhibit Q.

Petitioner's Exhibit No. 32, in the 1952 case entitled Operating Expenses of Chicago Union Station Company, Proportion Thereof Paid by the Milwaukee Railroad on Basis of Use, and Proportion Thereof which would have [fol. 259] been Paid by the Milwaukee Railroad if no Suburban Business had been Conducted by the Milwaukee Railroad, for the period January to June, 1952, inclusive.

Illinois Commerce Commission Exhibit 43, in the 1952 case, entitled Basis for Separation of Non-Revenue Passengers Carried between Suburban and Non-Suburban Employees Showing Estimated Cash Value.

(Petitioner's Exhibit 24) of Transportation Furnished by Suburban Service for Benefit of Non-Suburban Employees. That is on that one page.

That identifies the Protestant's Exhibit 21 in the pending case.

Exam. Fuller: These exhibits from Illinois Commerce Commission Docket 40486, which counsel has enumerated, will be marked for identification as Protestant's Exhibit No. 21 in this proceeding.

(Protestant's Exhibit No. 21, submitted by Mr. Guthrie, was marked for identification.)

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.
Let us take a recess.

(Short recess.)

Exam. Fuller: On the record.

By Mr. Guthrie:

Q. Now, referring to Protestant's Exhibit No. 20, I would like to have you look at your Exhibits 25 and 26 in the [fol. 260] 1952 case, please, Mr. Stephenson.

Mr. Merrill: May I ask Mr. Guthrie, you specify which Exhibit 25, as long as there are two of them?

By Mr. Guthrie:

Q. You can look at your corrected Exhibit 25, and the Exhibit 26 in the 1952 case. Incidentally, we might as well right now, find out what the difference is between the corrected Exhibit 25 and the original Exhibit 25, which was Protestant's Exhibit Q2 in the 1952 case. I want it to be understood when I refer to 1952 case, I mean Case 40486 of the Illinois Commerce Commission. I do not want to have to repeat that each time. Maybe I can help. The difference between those two exhibits is, is it not, that in your original Exhibit 25, Protestant's Exhibit Q2 in the 1952 case, there was a different figure for car repairs.

That is, there was a correction made in the car repair figures, but the primary difference is that the amount of union Station expenses and the basis for the computation is different in the revised corrected Exhibit 25 from what it was in the original exhibit identified as Exhibit 25. Is that not so, Mr. Stephenson? I believe that to be so.

A. There were three differences, Mr. Guthrie.

Q. All right, will you tell us what they are?

A. In the revised exhibit the car repairs was shown to be $134,000 against $244,089 in the earlier exhibit. The payroll taxes were shown to be $47,690 as against $54,441 in the earlier exhibit. And the Chicago Union Station expense was shown to be $172,089, instead of $75,374.

[fol. 261] Q. Those are all for six month periods. The figures you gave were six month periods in 1952.

A. That is correct.

Q. Now, Exhibit 26 in the earlier case also included in Protestant's Exhibit 21 in this pending case, was an explanation of your Exhibit 25 in the 1952 case. Is that correct?

A. Yes, subject to changes in the testimony later.

Q. Yes, but in general it purports to show how you determined your expense and the extent to which it was allocated in that case to out of pocket expense.

A. Yes.

Mr. Merrill: Mr. Examiner, in order to keep this record clear, I wonder if Mr. Guthrie would be willing to agree with wherever he uses the term Exhibit 25 without qualification, that he refers to the final Exhibit 25 as offered by petitioner. I believe in this last question he was referring to the original one which was withdrawn and is not properly therefore, labeled Exhibit 25.

Mr. Guthrie: It is quite convenient to refer to the original Exhibit 25, which compares to the corrected Exhibit 25, which is marked corrected.

Mr. Merrill: If we could have it specifically referred to as original and revised, then I will know what he is talking about and so will the witness.

[fol. 262] By Mr. Guthrie:

Q. As a matter of fact, the exhibit was used to explain both of them, was it not, Mr. Stephenson? Exhibit 26.

A. Exhibit 26 refers to the items other than Union Station expense, if I am not mistaken. I should qualify my answer. I said yes, but yes, subject to adjustment as testified to later on.

Q. Yes, but without exception it applies to each of them.

A. That's right.

Q. Now, let me refer to your Exhibit 12 and Exhibit 13 in the pending case. When I refer to Exhibit 13, I mean Exhibit 13A, 13B, and 13C and when I refer to Exhibit 12, I mean Exhibit 12A, 12B and 12C. Exhibit 12 purports to give the expenses and revenues for the complete year 1954, does it not?

A. It does.

Q. Exhibit 13 purports to give the expenses and revenues for the last four months of 1954.

A. That is true, both not including any Chicago Union Station expenses.

Q. Directing your attention to Exhibit 12 and particularly Section 12B and 12C, maintenance of Way and structures. The 12B is just out of pocket expenses with an explanation of how you arrived at out of pocket, and 12C is the fully distributed and out of pocket with an explanation of how you arrived at fully distributed expense.

A. That is correct.

[fol. 263] Q. Now, you included under maintenance of way and structures in Exhibit 12, 25 items. I am excluding credit and also payroll taxes, but outside of that, 25 items as out of pocket cost, have you not?

A. My count is 28. Anyhow, it is lines 1 to 40.

Q. Some of them were zero.

A. That's right.

Q. I left out the zeros. Count them again.

A. I still get 27.

Q. I excluded the credit on 279 and I excluded the payroll taxes.

A. Excluding those two items, it is 25, yes, sir.

Q. Now, in the 1952 case, you testified as to 22 of those items there would be no out of pocket expense, did you not?

A. I did not.

Q. Well, did you prepare Exhibit No. 26 in the 1952 case?

A. Yes sir.

Q. Did you prepare the corrected Exhibit 25?

A. I did, or it was prepared under my direction.

Q. How many items in the maintenance of way and structures did you find in out of pocket cost in 1952? Will you look at your corrected Exhibit 25, sheet 2?

A. There are three items exclusive of Account 278, which makes a fourth item.

Q. Well, I will amend my statement. I omitted 278. But, [fol. 264] including 278, then you had four items in the earlier case that you testified to out of pocket expense, four only.

A. There were four items only of expense that are shown. That does not mean that there are not other out of pocket expenses which were not shown.

Q. You listed only four, did you not? I am talking about the maintenance of way and structures division.

A. There are the four only which amounts are shown. For which amounts are shown I should say.

Q. The total amount of out of pocket expense shown by you to have been incurred the first six months of 1952, under maintenance of way and structures, $15,551.

A. That is the amount shown in Exhibit 25.

Q. That is the only list you gave, was it not, in that case, of the out of pocket expense?

A. In my testimony I said the expenses on an out of pocket basis are cut to the bare bone.

Q. You did not give any other expense under the division of maintenance of way and structures, did you?

A. No, I said that I didn't.

Q. That would be $31,102 for the year would it not?

A. If you multiply $15,551 by two, you get $31,102.

Q. That $15,551 is six months.

A. It is the first six months of the year. It doesn't necessarily mean the last six months would be the same amount. [fol. 265] Q. Take the first six months then of '52. You had $15,551 out of $166,593. Is that not correct?

A. That's right.

Q. In the pending case as shown by Exhibit 12, you have $93,913, more than three times as much out of $330,126

allocated to out of pocket expense, have you not? Let me state that over again. You have $93,913 allocated to out of pocket expense out of fully distributed expense of $330,126.

A. That is right, as shown on line 1 of Exhibit 12A.

Q. Now, let us examine some of these accounts. In Exhibit 12, you have grouped, have you not, accounts number 201, 202, 208, 212, 214, 216, 218, 220 and 221.

A. Did you include 201?

Q. Yes, I should have left out 201.

A. Yes.

Q. Excuse me. Strike 201 and starting with 202.

A. The explanation given covers accounts 208 to—202 rather, to 221.

Q. As listed there.

A. Yes, sir.

Q. Referring to my computation, out of a total cost on a fully distributed basis of $88,553, you have assigned $61,835 to out of pocket expense. Is that right?

A. Could I have the question repeated again?

Exam. Fuller: Read the question.

[fol. 266] (Question read.)

A. The total of accounts 202 to 221, inclusive, appearing in Exhibit 12C, is $88,553. The total for the accounts in Exhibit 12B, similar accounts, is $61,835.

Q. In other words, you assigned as out of pocket expense, $61,835 out of a total fully distributed expense stated to be $88,553. Is that not right?

A. Yes, the out of pocket expenses in the Exhibit 12B based upon the portion shown on the maintenance study, Railroad Maintenance Study of the Engineering Section of the Bureau of Valuation.

Q. On the last case, in computing your out of pocket expense, you did not assign any out of pocket expense to any of those items, did you?

A. We didn't include any joint expenses in the amounts shown in Exhibit 25.

Q. Mr. Stephenson, you did not include any out of pocket expense in any of those items in your 1952, did you? Will you please turn to Exhibit 26?

A. I have it. The answer is no.

Q. For example, under Account No. 202, you stated none of this expense is included in out of pocket cost. There was exactly the same concluding remark on each of, as to each of the accounts I mentioned.

A. Yes, that is what the statement was, and it meant to bring out that that did not necessarily mean——

[fol. 267] Exam. Fuller: Let us not argue the case. Just answer the questions.

By Mr. Guthrie:

Q. Why the change in treatment?

A. In the present case we are before the Interstate Commerce Commission, and in my testimony I said we had used a formula providing for comparison of railway revenues with expenses for suburban and commutation services designated at Rail-Commutation 10-43, which was developed by the cost section the Bureau of Transport Economics and Statistics, ICC.

Exam. Fuller: Why didn't you use that same formula before the State?

The Witness: I wish now that we had.

Exam. Fuller: Why didn't you?

The Witness: In the case before the State there was such a margin between the expenses and revenues that some of these items didn't seem to be important at that time.

Exam. Fuller: Well, you knew about that formula when you prepared the state case, did you not?

The Witness: Oh, yes, I knew there was such a formula.

Mr. Guthrie: Off the record.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

By Mr. Guthrie:

Q. Do you have a copy of what you were referring to, Mr. Stephenson?

[fol. 268] A. I have a copy with certain pages not material to this case deleted.

Q. I am not looking into your private documents, but just want to see what the cover of it says.

A. All right.

Q. Is this the same as the Railroad Maintenance Study

A. The Railroad Maintenance Study is referred to in thi but it is not the same thing.

Q. Was it not the Railroad Maintenance Study, page 3 you referred to in your direct examination?

A. I referred to both.

Q. As a matter of fact, the formula you are referring t has it been considered or adopted by the Interstate Com merce Commission?

It has not been, has it?

A. The last sentence of the explanatory note says, "Thi formula has not been considered or adopted by the Inte state Commerce Commission."

Q. That is true also of the Railroad Maintenance Study This study has not been examined or passed on by th Interstate Commerce Commission. Is that not what it says

A. That is what it says.

Q. Mr. Stephenson, that is a deferred maintenance study is it not?

A. No, it isn't.

Q. Do you have a copy of what you used?

[fol. 269] A. Are you speaking of the cost section's fo mula now?

Q. I don't know what you used.

Mr. Merrill: Used in what connection, Mr. Guthrie?

Mr. Guthrie: In this allocation of out of pocket cos As a matter of fact, will you turn to Exhibit 12B. The are two general classes of items that we are mentionin here, and I am talking about the accounts 202 to 221. On is yard switching tracks and the other relates to runnin tracks.

A. That is right.

By Mr. Guthrie:

Q. And you say in the last sentence under yard switc ing tracks, "The out of pocket expense was based upon th use portion shown on page 31 of the Railroad Maintenanc

Study, Engineering Section of the Bureau of Valuation, ICC, dated February 15, 1953." Do you not?

A. That was read correctly, yes, sir.

Q. You do not mention any other revenues, do you?

A. I am only speaking about one thing here.

Q. I am only talking about one thing also. I am talking about these items, referring to accounts 202 to 221, the part that has to do with yard switching tracks. Your only reference is to that study, is it not? As for the out of pocket distribution is what I am talking about.

A. That is all that appears there, but of course, I said in my testimony that the whole Exhibit 12A was based on——

Q. In the exhibit you put in evidence——

[fol. 270] Mr. Merrill: Just a moment. Mr. Examiner, may the witness finish his answer, please?

A. As I said, these schedules follow very closely the formula providing for a comparison of railway revenues with expenses for suburban and commutation services, designated as Rail-Commutation, 10-43, developed by the cost section, Bureau of Economics and Statistics.

Mr. Guthrie: What page are you reading from?

Exam. Fuller: That is his testimony.

By Mr. Guthrie:

Q. You are talking generally about the schedule in Exhibit 12, are you not?

A. I wish you would be more explicit. You said you are talking about——

Q. What did you use? Your only reference in your written matter is to the page 31 of the Railroad Maintenance Study, is it not, in your exhibits. By the way, that applies to running tracks as well as switching tracks, the same thing that I read, does it not? Look at Exhibit 12, 12B. Will you please look at Exhibit 12 and answer my question? 12B I am talking about, the exhibit in this case. I don't know what else you have, but please look at the exhibits in this case, Exhibit 12.

A. What is your question?

Q. The reference I read, and I will state it again, the

sentence under switching tracks in accounts we have been mentioning is, the out of pocket expense was based upon [fol. 271] the use portion on page 31 of the Railroad Maintenance Study, Engineering Section, Bureau of Valuation, ICC, dated February 15, 1953. That sentence also applies to the running track items, does it not?

A. It does.

Q. And that is the only written reference in your exhibits as to the basis for this out of pocket distribution, is it not? Now, yes or no. Will you please look at Exhibit 12?

A. I am looking at Exhibit 12. I do not find a specific reference to the formula designated as Rail-Commutation, 10-43.

Q. With respect to the items 202 to 221, do you find any reference to anything else except what I read, as the basis for distribution of out of pocket expenses?

Will you please answer that, Mr. Stephenson? Read the question, please.

(Question read.)

Q. Will you answer, please?

A. There are other explanations besides that which you have read. In other words, what you read is only one part of the development.

Q. What other explanations are there?

Exam. Fuller: He means this other explanation preceding this.

Mr. Guthrie: That is the way he arrives at the fully distributed expense. What precedes it. I am talking to how he makes the allocation to out of pocket expense after he has arrived at his fully distributed cost figures.

A. That isn't the formula at all, Mr. Guthrie. You don't [fol. 272] arrive at fully distributed cost first.

By Mr. Guthrie:

Q. You said the out of pocket expense was based upon the use portion shown on page 31 of the Railroad Maintenance Study. What you mean is, you determine the expense by what you stated before that, and then you apply a certain ratio for out of pocket expense. Is that not right?

A. Yes, the amounts before are not the fully distributed expenses. I just want to make that clear.

Q. Let us see if they are. Will you look at Exhibit 12C, under yard switching tracks and see what difference there is in what you said as developing the fully distributed expense of the first part of Section 12B.

A. In some cases— I don't find it though in connection with accounts 202 to 221. There are some expenses that are wholly assigned to suburban. It just so happens in the accounts 202 to 221, the fully distributed costs are first determined and the out of pocket cost is determined from the amounts so fully distributed.

Q. The last sentence I read is the only explanation I think, Mr. Stephenson. Now, let us take what you referred to, page 31 of the Railroad Maintenance Study, what it has to do with deferred maintenance. It has to do with deferred maintenance, does it not?

A. The document you referred to is headed, Railroad Maintenance Study, including discussion on deferred capital [fol. 273] expenditures and Statement of Use Percentages.

Q. Actually what the Railroad Maintenance Study does is to determine for the years 1951 to the years 1952 and '53, the overall trends of expense, based on ton miles of traffic in the entire country, isn't it?

A. Not the portion——

Q. I am talking about the Railroad Maintenance Study document.

A. Well, I am talking about the part of that study which we used.

Q. The Railroad Maintenance Study document has charts showing wiggly lines which show the maintenance and the deferred maintenance and various items of maintenance, and the variance from normal in traffic. The items given in there are very normal in traffic in the country-wise statistics, are they not?

A. I haven't studied it all. I see graphs here. The only portion of the record that we used is Appendix A which is the traffic effect on maintenance expenses.

Q. But you have not looked at the rest of the report to find out what that is supposed to apply to? Haven't you studied the rest of the report?

A. I am following a formula adopted by the cost section in which they specifically refer to these use percentages which we have used.

Q. In this case you did not make any effort to determine whether or not there was any actual out of pocket expense added to out of pocket expense to various items because of the suburban service, did you?

[fol. 274] A. I said I was following the formula of the cost section.

Q. Will you answer my question, please, Mr. Stephenson?

Exam. Fuller: Read the question.

(Question read.)

By Mr. Guthrie:

Q. In your individual railroad. I am speaking of accounts 202 to 221, as you know.

A. Our study was confined to following the Commission's formula.

Exam. Fuller: You made no special study on the Milwaukee of these use percentages?

The Witness: That's right. I said our study was confined to the cost section formula.

Mr. Guthrie: I think the answer to the question is no.

Exam. Fuller: That is right. Well, you have not made a special study say so.

By Mr. Guthrie:

Q. I notice by the way as we go through with these accounts, that you have spoken of a ratio of suburban gross ton miles to the total ton miles. Anywhere in your exhibits have you given us the gross ton miles, suburban or otherwise?

A. They are in our work papers, but I don't think——

Q. You have not produced them here at this hearing anywhere. Do you have them?

A. Yes.

Q. Can you produce them here? Will you produce them this afternoon?

[fol. 275] A. They are right here if you want them.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

We will reconvene at two o'clock.

(Whereupon, at 12:15 p. m., a recess was taken until 2:00 p. m. of the same day.)

[fol. 276] AFTERNOON SESSION 2:00 p. m.

Exam. Fuller: On the record. Let us proceed.

R. S. STEPHENSON resumed the stand and testified further as follows:

Cross examination (continued).

By Mr. Guthrie:

Q. I think I was asking you for gross ton miles when we adjourned, Mr. Stephenson.

A. Yes, we have the gross ton miles figures here.

Q. May I have them, if you please? (Handing to counsel) It is quite an extensive——

Exam. Fuller: You just want the total figures of each, do you not?

Mr. Guthrie: Yes, I think so.

Exam. Fuller: Can't you give them to him?

The Witness: The figures are, I think, in eight statements covering the first quarter of 1954, the second covering the second quarter of 1954, and there is one statement for each of the months July to December, 1954, inclusive. That is the way they were used.

By Mr. Guthrie:

Q. Do you have the totals for the year?

A. No, we do not.

Q. I do not care to go over all these now. They are just too bulky. Is there any reason why we could not borrow these? I do not want to take it if you do not want me to. On the other hand, there is such a mass of figures. There

[fol. 277] isn't any total here. Maybe we could borrow these and look at them. See if we could summarize them. I do not want to go over all these figures now. It would take too long. Let me direct your attention, Mr. Stephenson, to Account No. 214. First, let me ask you to take Exhibit 12 and refer to Account No. 214 in 12A. What was your out of pocket expense that you have listed there for the entire year for running tracks in that account?

A. The exhibit you refer to is 12B instead of 12A, I think.

Q. I think that is correct. I am sorry, 12B, yes.

A. The amount is $7,524.

Q. Now, I will show you the annual report made to the Illinois Commerce Commission for the year 1954. This bears your verification, does it not?

A. It does.

Q. I will ask you to look at Schedule 720, page 702 of the record, and at the Account No. 214, running tracks. What is the total amount of expense allocated to passenger service for all of Illinois for the year?

A. 3,680.

Q. As a matter of fact, the passenger train miles in Illinois are about equally divided between through service and suburban service, are they not? I can help you on that.

A. About 50-50, yes.

Q. You have for the entire Illinois, in both through and suburban service in your annual report, 3,680 for the entire [fol. 278] state, and 7,000 in your exhibit in this case, allocated to suburban service. That is correct, is it not?

A. There is that discrepancy, yes, sir.

Mr. Guthrie: I will ask that these be marked Protestant's Exhibit 22.

Exam. Fuller: It will be so marked.

(Protestant's Exhibit No. 22, submitted by Mr. Guthrie, was marked for identification.)

By Mr. Guthrie:

Q. I show you Protestant's Exhibit 22, which are certain pages from the Annual Report—that is, State of Illinois—including the one I just showed you, that Schedule 702 that I shall refer to, rather than take the bulkier report.

I ask you now to turn to Exhibit 13 in this case, and look at the item for water stations, Account No. 231, on 13B. You say the out of pocket cost is based upon stations that could be eliminated if the suburban stations were discontinued, and also on the ratio of fuel issues of suburban service to total fuel issues. What do the water stations have to do with fuel issues?

A. There again we are following the formula of the ICC.

Q. That is not the formula of the ICC, is it?

A. Where water stations are used in common, include the suburban portion of the use or out of pocket portion of the main expense based upon the ratio of the fuel issues in suburban service to the total fuel issues.

Q. Do you say here you are following any formula in [fol. 279] your exhibit in determining that?

A. In introducing the exhibit I said we were following the Interstate Commerce Commission formula.

Q. Will you look at sheet 4 of your corrected Exhibit 25 in the prior case. I mean Exhibit 26, Account 231. There is no reference there is there, of fuel issues?

A. No.

Exam. Fuller: Wasn't that statement 441 in this respect based on the theory that relative amount of fuel, relative amount of water would be the same in connection with steam locomotives?

The Witness: I think that is true.

Mr. Guthrie: You do not use any steam locomotives now, do you?

Exam. Fuller: So this proportion would not apply to these locomotives, would it?

The Witness: Of course, water is used with diesel locomotives as well.

Exam. Fuller: I mean the relationship with the water-fuel would not be the same as it was with steam.

The Witness: Well, it might be relative as to the same proportion.

By Mr. Guthrie:

Q. Do you know whether it is or not?

A. No.

Q. How many water stations do you, or would you expect

to discontinue if you did not run these few suburban trains [fol. 280] on diesel engines?

A. Elgin, Fox Lake, Walworth.

Q. You did not include any out of pocket expense in your last case at all, did you?

A. No, should have.

Q. I am not asking whether you should have or not. You did not, did you?

A. No, I didn't.

Q. Now, I want to direct your attention to Account No. 249 in Exhibit 13, signals and interlockers, on 13C. You have allocated $13,295 to signals and interlockers for the four month period, have you not?

A. That's right.

Q. That would be $39,885 per year, would it not?

A. Three times $13,000.

Q. Well, it would be at that rate, it would be $39,885 per year, would it not?

A. Yes.

Q. I direct your attention again to the excerpts from your annual report, identified as Protestant's Exhibit 22, Account 249, under Schedule 720, signals and interlockers. How much did you allocate for the year to the entire passenger service in Illinois?

A. $41,257.

Q. In other words, you allocated nearly $39,885 to the [fol. 281] suburban service and left about $1400 for the through service, did you not?

A. There is that difference in the figures.

Q. Let me direct you attention to Accounts 404 and 405. In your Exhibit 13C, 404 is also signal and interlocker operation like 249, allocated to suburban service on a fully distributed basis for four months, $19,211. That is correct, is it not?

A. For four months, yes, sir.

Q. And at that rate, that would be $57,633 for the year, would it not?

A. Three times $19,000 is $57,000, yes, sir.

Q. Now, again referring to the excerpts from the Annual Report, in that Account 404 how much did you assign to the whole entire passenger service in Illinois on that account for the year?

A. $59,202.

Q. In other words, in that account you used up $57,633 for the suburban service, leaving about $1600, a little less than $1600 for the through service although the train miles are even, did you not?

A. The figures quoted are as included in the report to the Commission.

Q. Look at 405, crossing protection. In Exhibit 13 you have assigned, have you not, for the four month period, $11,847 on a fully distributed basis to that account.

A. True.

Q. Which would be $35,551 at the same rate, for a full year.

A. Three times that is $35,000.

[fol. 282] Q. Look again at your Annual Report, year 1954. How much did you assign to the entire passenger service in Illinois for the year?

A. $36,949.

Q. So that according to your figures, you assigned to the suburban service $35,551, leaving to the through service, $1398 only.

A. That is true.

Q. I want you to look at Account No. 400, engine house expense. On Exhibit 13, or we will take Exhibit 12 on that, which is your allocation for the full year. Account No. 400, you have $135,518 fully allocated to the suburban service for the full year, have you not?

A. That's right.

Q. Will you look at your same item in your Annual Report under the heading, Expenses Related solely to Passenger and Allied Services. In Illinois that is, for the whole passenger service in Illinois, you have allocated $130,856. Is that correct?

A. That is correct.

Q. That is, you have five thousand more allocated to the suburban service than there is in your Annual Report allocated to both through and suburban service.

A. There is that discrepancy.

Q. Now, let us pass to some of the items under the heading, Maintenance of Equipment in your Exhibit 13. Please look at Account No. 331 in 13B. That is the out of pocket

[fol. 283] expense column and you have included there two depreciation items, one $51,720 and the other $13,272, for $64,992 in all, as an out of pocket expense, have you not?

A. That's right.

Q. That is for four months. For the year, at the same depreciation rate you would have $188,976, would you not?

A. Three times the figure you gave is about $188,000.

Q. That is it exactly, $188,976 according to my arithmatic.

A. I will accept it.

Q. Will you look at Exhibit No. 26 in the prior case, under Account 331. You stated there that was not included in out of pocket cost, did you not, depreciation?

A. Yes; this is not included in the out of pocket cost.

Q. Do you state in here, is there any reason stated in your Exhibit 12 as to why that is included in the out of pocket cost?

A. On the formula of the cost section, ICC, the instruction is to include all charges applicable to equipment used exclusively in suburban service where equipment is used in common with other services, compute the suburban portion of the expense by following the tenure of the applicable instructions for Account 308 to 328, inclusive, as shown above.

In this case, the figure—the equipment on which depreciation is figured is used sole-y in suburban service.

Q. You would not throw it away would you, if you stopped having suburban service?

[fol. 284] A. That isn't the question at all.

Q. On an out of pocket basis, you put it all in out of pocket, the whole thing.

A. Yes, sir.

Q. How much out of pocket do you spend for it?

A. Every penny.

Q. You did not include it before, did you?

A. No.

Q. Why not?

A. We should have.

Q. In other words, your designation of an out of pocket expense has nothing to do with what you spend because of suburban service, has it?

A. I refer you to the definition of out of pocket expense as used——

Q. Just a minute. I asked you a question. I did not ask for a definition. I ask the reporter to please read the question.

Mr. Merrill: Mr. Examiner, I submit the witness is trying to answer the question and is referring to earlier testimony in this case where he defined the term which Mr. Guthrie is now asking for a definition.

Mr. Guthrie: I did not ask for a definition. Will you read the question?

Mr. Merrill: May we have the question read? I think I misunderstood it too.

[fol. 285] (Question read.)

By Mr. Guthrie:

Q. Does it have or doesn't it have anything to do with what you spend because of suburban service?

A. It does over a period of time.

Q. Even under your Railroad Maintenance Study that you referred to in several of your accounts here, pages 31 and 32, even if we considered that were applicable, it only permits use of 15 per cent of depreciation as applicable to a change in traffic, does it not?

A. This is not a change in traffic.

Q. What did you mean then when you referred to it in the other instances? Didn't you take those change in traffic figures? Didn't you say you did? I was talking about suburban service. Didn't you use your other figures? Didn't you refer to other figures in this account under the heading, Percent Maintenance Expense Affected by Change in Traffic in your Exhibit 13?

A. I think that was in connection with joint expenses. We are not dealing with joint expenses here when we are talking about the depreciation on equipment that is used solely in suburban service.

Q. It is not useable solely in suburban service, is it?

A. But it is being used solely in suburban service.

Q. If suburban service were abandoned it would still be used.

A. Some of it. The diesels would.

[fol. 286] Q. You paid no attention to this in this connection, did you?

A. Because the formula which we are following did not provide the use of 15 per cent for equipment.

Q. So you stuck in the $188,000 of depreciation based on these conclusions as an out of pocket expense.

A. Following the Commission's formula, yes, sir.

Q. You have not put anything in evidence about the Commissions' formula, have you?

A. If you mean that you would like to have us file a copy of the formula, it could be done.

Q. That is up to you. As a matter of fact, the Commission has approved no formula, has it?

A. The cost section of the Commission has.

Q. It was carefully stated on the outside the Commission has not passed on it.

A. That is stated in a good many statements which were put out by the Interstate Commerce Commission and accepted as though they were approved by the Commission itself.

Q. Actually not a dime of this depreciation would be saved if you did not have any suburban service, would it?

A. I do not agree with you.

Q. Well, maybe it is a matter of argument. Mr. Stephenson, let us turn to Exhibit 15. That is your cost of living indices, isn't it? This shows the rise between 1952 and 1954, does it not, of about one and a quarter per cent in labor cost, [fol. 287] and one and twe-thirds per cent in the other items that go into the cost of living.

Mr. Merrill: Could I have that question read?

(Question read.)

Exam. Fuller: That is 1952 verses 1954.

Mr. Guthrie: Yes.

The Witness: Yes, it shows that cost between '52 and '54.

By Mr. Guthrie:

Q. And fuel and other costs are substantially the same, are they not?

A. Diesel fuel is the same.

Q. What about other materials?

A. Other materials is about an increase of about five per cent.

Q. Actually, your own costs of operation have substantially decreased and your revenues have substantially increased, I mean from suburban service, between 1952 and 1954, have they not? Even on your own figures.

A. We have a reduction in the expenses connected with locomotive operation.

Q. You have a reduction in all your aggregate operating expenses, have you not? That is between 1952 and 1954, and an increase in your operating revenues.

Mr. Merrill: Between 1952 and 1954?

Exam. Fuller: That is in suburban service?

Mr. Guthrie: Yes.

A. I will have to check that.

By Mr. Guthrie:

Q. Well, let me help you. Look at your corrected Exhibit [fol. 288]-25.

A. I have it.

Q. Your revenues for six months according to that exhibit, were $862,158, were they not?

A. That's right.

Q. Which would be $1,724,316 for the year.

A. That's right, at that rate.

Q. They were put in supposedly, in the case as showing what your then rate of revenue and expense was for the year 1952, were they not?

A. That's right.

Q. Now, what are your revenues, according to your own figures, for 1954? If you will, please, look at Exhibit 12, comparable revenues, $1,833,052, were they not?

A. That's right.

Q. Up something more than $100,000. Is that not right?

A. Yes, they are up some. I am not willing to accept your calculation of twice the first half of the year as being the year's figure.

Q. Have you got the figures for the last half of 1952?

A. No.

Q. Well, is there any reason to show that the revenues were any different for the last half?

A. I don't think they were materially different.

Q. Well, then, we will take them.

[fol. 289] A. All right.

Q. Incidentally, the rates of fares, 1952-1954, were the same also, were they not?

A. I believe so.

Q. Actually, if you have taken the rate of revenue shown by your Exhibit 13 for four months, and expanded that to the year, you would have a still greater increase, would you not?

A. Slightly.

Q. And now, if you will look at your corrected Exhibit No. 25, in the 1952 case, take your expenses exclusive of Union Station expense, which I assume has not changed. What were your expenses exclusive of Union Station expense, according to Exhibit 25 in the 1952 case? I suggest a figure of $1,360,053. I believe that is the sum of the payroll taxes and other expenses.

A. That seems to be right.

Q. So that again, using that as a measuring stick for the year, the expenses for the year would have been $2,720,106. Is that right?

A. That is right.

Q. Now, will you look at Exhibit 12—no, Exhibit 13 on the diesel basis. What are your total expenses shown there, 13A, to the four months. I am taking out of pocket expenses by the way, in each case. $764,224, isn't it?

A. Yes, that is the figure shown there.

Q. That is $2,292,672 for the year, is it not?

[fol. 290] A. Multiplied by three, that is the figure.

Q. Which is about $430,000 less in out of pocket expenses than the year 1952, is it not?

A. I don't recall your first figure.

Q. Well, let us look at that again. I want you to know it is correct. $2,720,106, that is taken from Exhibit 25, Mr. Stephenson, in the 1952 case, using the factor of two.

Exam. Fuller: Does that include Union Station?

Mr. Guthrie: No, I am assuming Mr. Examiner, that

Union Station figures about the same way in the two years. It would be about the same. That is taking operating expenses exclusive of Union Station. There is no claim so far as I know, that Union Station expenses have increased.

Exam. Fuller: Does that include payroll taxes?

Mr. Guthrie: Yes, those are, that is the only way to get the comparison, as far as I know.

The Witness: The difference is $427,434.

By Mr. Guthrie:

Q. So added to the $130,000 or something like that that we had before, so we have an increase in revenue, and $430,000 about, decrease in expenses.

A. A decrease of $427,434 in expenses.

Q. So the fact that the cost of living index has risen by 1½ per cent has very little to do with your situation, has it?

A. Oh, yes, it has something to do with it. It increased our cost.

[fol. 291] Q. You just gave your cost, did you not? Never mind. Will you please look at Exhibit 20 in the 1952 case, and according to that exhibit your operating expenses per revenue train mile in 1952—that is, per revenue train mile—were $4.49 on an out of pocket basis, were they not?

A. Yes.

Q. According to your Exhibit 11 in this case, for the entire year the revenue expenses per train mile, and incidentally I am not trying to mislead you. I know the difference. One is per revenue train mile and one is per train mile, were $3.72. Is that not correct?

A. That is correct.

Q. As a matter of fact, if you use the figure for the last part of the year when you are using only diesel engines, that falls to $3.44 on your own figures, does it not? Just to refresh your recollection on that, I will ask this be marked Protestant's Exhibit 23.

Exam. Fuller: It will be marked Protestant's Exhibit No. 23 for identification.

(Protestant's Exhibit No. 23, submitted by Mr. Guthrie, was marked for identification.)

A. I have it. The figure is $3.44.

By Mr. Guthrie:

Q. Even allowing for any difference there may be in revenue train mile and train miles, there has been a substantial decrease in expense per train mile, hasn't there? [fol. 292] Expense per unit, I will put it that way.

A: About 28 cents.

Mr. Guthrie: Could we have a recess for about three minutes?

Exam. Fuller: We will take a recess.

(Short recess.)

Exam. Fuller: On the record.

By Mr. Guthrie:

Q. Mr. Stephenson, will you please look at Petitioner's Exhibit 24 in the 1952 case? I call your attention particularly to the second sheet which refers to non-revenue passengers. I believe this exhibit was produced by you and testified to by you in that case, was it not?

A. It was.

Q. And I also refer to the Illinois Commerce Commission exhibit No. 43, which is also part of our Exhibit No. 21 in this case, which apportions the passengers between suburban and non-suburban employees. Exhibit introduced by the Illinois Commerce Commission purporting to be from information furnished by you summarizing the statistical data taken from Exhibit 24 and other information. Has there been any substantial change in the number of employees carried or the nature of their employment between 1952 and 1954?

A. No, sir, no substantial change that I know of.

Q. Let us pass to Union Station. Has there been any change in the method of allocation of Union Station expenses among the railroads using the station between 1952 and the present time?

A. The operations are under the same contract and I know [fol. 293] of no particular difference in the method of apportioning expenses.

Q. I wanted to call your attention to your Exhibit No. 14. Will you please turn to the last page, sheet 10. I note

that you have assigned 79,347 cars there to the suburban trains of the Milwaukee Road. I understand it is computed this way: Each suburban car, passenger car is counted as four-fifths of a car. Each diesel unit is counted as one car, and each steam locomotive is counted as two cars. Is that correct?

A. Yes, that is so stated in my testimony.

Q. I wanted to review it to get it before us. Now, we were furnished by your office with the following information as to percentages of cars using Union Station. Gulf, Mobile and Ohio, .69 per cent; Burlington 54.77 per cent; Milwaukee 42.22 per cent; Pennsylvania 2.32 per cent. Those were given to me as the percentages of the suburban cars using Union Station. Is that correct?

A. That is the proportion of suburban cars, year 1954, similar to those on sheet 4, Exhibit 30, Illinois Commerce Commission, Docket No. 40486.

Q. The number of suburban cars allocated to the Milwaukee is 42.22 per cent. The number of suburban cars of the so-called proprietary companies is 99.31 per cent of the total, is it not?

A. 99.31 per cent of the total.

Q. The proprietary companies are the companies that own the stock in Union Station whose suburban cars are [fol. 294] subject to the adjustment I mentioned. Is that not so?

A. Yes.

Q. Three railroads and the GM&O is a lessee.

A. Yes.

Q. Now, the difference between the total, 680,005 under the proprietary allocation, and 715,750 under the GM&O agreement, that difference of 35,745 represents the difference between the actual in fact total number of suburban cars and the number of suburban cars charged in the proprietary account. Is that not correct?

A. I don't believe your stated it properly.

Q. Well, you state it for me, will you please?

A. Well, roughly, the difference is the one-fifth of a car not counted.

Q. That is what I mean, the difference in the allocation. That is what I meant. So that now if you will take this

paper, if you do not mind, and write down that 35,745. Now, the total number of proprietary suburban cars giving affect to the allocation, four-fifths of a suburban car to a car would be obtained by taking the percentage of the Milwaukee which is 42.22 in the numerator, 99.31 in the denominator, and multiplying that into 79,347 cars, isn't that correct, allocated to the Milwaukee?

A. I'm lost.

Q. Well, I don't blame you. Let me take it again. The Milwaukee per cent is 42.22.

A. Right.

[fol. 295] Q. I do not think I stated it quite correctly anyway. If you divide that by 99.31 which is the total proprietary, you have the per cent of the proprietary cars which are used by the Milwaukee, and 99.31 per cent are proprietary. You have the per cent of the proprietary cars that are used by the Milwaukee, because 44.22 applies to all the cars, GM&O and others.

A. Yes.

Q. That equals 42.51. You can check that afterward, but will you accept that for the time being? It is a little more than it would be if your denominator were 100. 42.51.

A. Assuming your calculations are correct, it would be 42.51 per cent.

Q. You can check them. I think you will find they are. Now, 42.51 per cent applied against 79,347 would give 186,655 proprietary cars on an adjusted basis. That is dividing the 42.51 into the 79,347.

A. Mr. Guthrie, if you do not mind, I can give you the figures.

Q. I have 225,555 cars, suburban cars using Union Station. Is that correct?

A. The correct figure is 222,587.

Q. Does that include——

A. That includes the GM&O.

Q. Is that on the adjusted basis for the other cars?

A. This is suburban cars.

Q. Suburban cars, but I mean you are counting suburban [fol. 296] cars as full cars in that.

A. No, four-fifths of a car.

Q. But if you use the GM&O you ought to count them as

full cars, shouldn't you? Frankly, I got 222,000 and I got 186,655, but I added that 35,745 to it, gave me 222,400. Then I added the GM&O and brought it up to 225,555. However, I will take your figures if you give me the number of suburban cars that use the station. If you will give me the number of the cars, suburban cars using the station, I want that. I thought I had the basis for computing it.

A. The aggregate figures from which these percentages you called into the record were obtained are as follows: GM&O, 1,538, and .69 per cent. Pennsylvania 5,153—2.32 per cent. Burlington 121,914—54.77 per cent. Milwaukee 93,982—42.22 per cent. The total is 222,587, or 100 per cent.

Q. So that out of the 766,875 cars using the Union Station in 1954, almost exactly 30 per cent, using the suburban service.

A. 30 per cent you said?

Q. Yes, looks like it to me. I am rounding the figures a little bit, but I think it is almost exactly.

A. 29 per cent I believe is nearer.

Q. It is between 29 and 30.

A. Yes.

Q. In your prior case you listed head end expenses. I believe there is a question asked here, and I believe the answer was, or the figures as you have it from your office, [fol. 297] I believe was 3.2 per cent. Is that correct?

A. Yes, I think that is all right, Mr. Guthrie.

Q. Now, Mr. Stephenson, I will show you Exhibit 30 in the 1952 case, which was put into evidence as Protestant's Exhibit Q. That was prepared, was it not, by A. B. Olson, auditor, Union Station Company.

A. Yes, it was.

Q. I ask you direct your attention to your testimony in the prior case. I can't give you the date of it. It was during the hearings in that case. It appears at page 243 of the transcript.

"The facilities of the Chicago Union Station Company are used jointly with three other railroads for suburban and through passenger service under an operating agreement which provides the tenant lines will pay for the maintenance and operating expenses of those facilities on the basis of use, and property taxes and interest on outstanding bonds on the basis of ownership.

"At my request the auditor of the Chicago Union Station Company"—that is Mr. A. B. Olson, is it not?

A. Yes.

Q. "—has developed the expenses, taxes and rents applicable to suburban service for the six months ended June 30, 1952. The Milwaukee Railroad's proportion of such expenses, both on a fully distributed basis and out of pocket basis. These exhibits will be introduced by Witness A. B. [fol. 298] Olson, exhibit numbers being 29 and 30."

Then you went on after a little colliquiy between counsel.

"On Exhibits 29 and 30 we have indicated in pen and ink the Milwaukee Railroad's proportion of the suburban expense which is based on the percentage of Milwaukee suburban cars and locomotives using the station facilities to the total suburban passenger cars and locomotives. The per cent is 44.82. The company's proportion of all such expenses are set forth on line 42, Exhibit 25."

Did you so testify?

A. I did.

Q. The exhibits 29 and 30 referred to are the exhibits 29 and 30 which were introduced in evidence as Exhibits Q1 and Q, respectively, Protestant's Exhibit Q1 and Q in the 1952 case, and the exhibit No. 25 is your original Exhibit 25, which was introduced in evidence as Protestant's Exhibit Q2 in the other case. Is that not so?

A. I don't know, Mr. Guthrie.

Q. Those are the exhibits 29 and 30 that were marked and testified to by Mr. Olson in the other case. You know that, do you not?

A. Must be. I don't know, but they must be.

Q. And the Exhibit 25 that you referred to is your original Exhibit 25, is it not?

A. I presume so.

[fol. 299] Q. It is the one that incorporated the findings in Exhibits 29 and 30. You say this in line 42 of Exhibit 25.

A. Yes.

Q. That is true?

A. Yes.

Q. Now, the allocation of Union Station expenses in Exhibit 30, is based, is it not, first on the determination of the allocation of station facilities between facilities used for

nontransportation services, such as the head house, offices and so forth, facilities for through service, and facilities necessary for suburban service. Isn't that true?

A. That is what it purports to disclose.

Q. And that was the method used for allocation of Union Station expenses in all cases involving those expenses prior to this case, was it not?

A. I think you are always a little too broad. I believe I explained it was first used in 1941, I think.

Q. Well, the Olliphant formula, I think, was first used, to be correct, in 1943.

A. That's right.

Q. It was Exhibit 41 in the case of 1943 before the Interstate Commerce Commission. Let us clear it up. Let me call your attention to your testimony in the 1952 case, transcript pages 653 to 656, starting there on the bottom of the page.

You are being examined on direct examination by Mr. [fol. 300] McQuire, and in answer to his question as to the explanation of the Union Station Company matters, you testified, did you not:

"Exhibit 25, line 42 there is shown amounts representing this company's proportion of the expenses, taxes and rents of the Chicago Union Station Company applicable to the suburban service for the six months ended June 30, 1952, both on a fully distributed basis and/or an out of pocket basis.

"These amounts were derived from Exhibits 29 and 30 introduced by the auditor of the Chicago Union Station Company. Since the propriety of the inclusion of out of pocket expenses of this company's proportion of interest, taxes has been questioned, I have examined the records with respect to the origin of the formulas by the Witness Olson.

"This formula was first used in Exhibit No. 41 introduced in the hearing at Chicago, Illinois, October 16, 1943, Interstate Commerce Commission Docket No. 28974, before W. A. Disk, Examiner, ICC, and F. D. McElroy of the Illinois Commerce Commission.

"The formula was described by the Witness C. D. Olliphant, Chief Statistician of the Milwaukee Railroad, com-

mencing at page 706 of the transcript. Mr. Olliphant testified that in order to arrive at a fair distribution of the cost of the Chicago Union Station Company without any reference to the contract provisions, a special study was made by Union Station auditor, Mr. Besch, in consultation with the general manager of the Chicago Union Station Mr. Frick, the assistant general auditor of the Burlington Railroad, [fol. 301] superintendent of the Chicago Terminals Division, and head of the Joint Facilities Bureau of the Milwaukee Railroad.

"The objective of that study was determined by a reference to the utilization made of the Chicago Union Station by suburban trains, the investment in and operating expense of the station facilities that would be adequate to handle the suburban business.

"The witness stated, 'There is a concept there of the station that would adequately handle suburban business and the interest and taxes on that and other things, we think run both in an out of pocket as well as fully distributed basis.' It is as if we could separate a piece of the Union Station and say that is wholly used by suburban service. In these Exhibits 29 and 30, auditor Olson has followed the same formula and has revised the figures to those of the period from January 1, to June 30, 1952."

Did you so testify?

A. That is part of the testimony, yes.

Q. Now, in your Exhibit 14, in this case, you have used a doctrine of so-called relievable expense, have you not, based upon the contract between the three proprietary railroads as to how operating expenses of the Union Station should be paid. Is that not true?

A. Exhibit 14 is based on the payments made to the Chicago Union Station Company.

Q. It is based on the payments made as required by contract between the Burlington and the Milwaukee and the [fol. 302] Pennsylvania, is it not?

A. Yes, and the Union Station Company.

Q. The amount payable or allocated to any branch of the service has no relation to whether the facilities for which payments are made are used for through, or—for through service, suburban service or some purpose that has no relation to either service. Is that not correct?

Mr. Merrill: May we have that question read, please?

(Question read.)

Mr. Merrill: That first part of the question, I think is rather vague as to payments to a branch of the service. I would ask if Mr. Guthrie would clarify it please.

Exam. Fuller: Reframe the question.

Mr. Guthrie: There is just the one preposition missing, but I will say it all over again.

By Mr. Guthrie:

Q. Under the contract referred to, the amount of the payment charged against, or allocated to any division or branch of the service has no relation as to whether the facilities for which payments are made are used for through service, suburban service or for some purpose that has no relation to either service. Is that not true?

Mr. Merrill: Mr. Examiner, that is the same question again.

Mr. Guthrie? What is the matter with it?

Mr. Merrill: I don't know. Do you understand it, Mr. Stephenson?

[fol. 303] Mr. Guthrie: Will you read it?

Exam. Fuller: It seems to me it is a clear question.

Mr. Merrill: It may be I am dense about it, but if the witness understand it, go ahead.

Exam. Fuller: The contract basis has no real use.

The Witness: Well, the portion of the contract payments based on use does have some relation to through service, head end service if you want to call it so, and suburban service because it is based on car counts.

Exam. Fuller: But that does not necessarily mean that is the actual use of the station made by the suburban service, does it? You do not say that.

The Witness: No, I don't think we would say that.

Exam. Fuller: You say it is the contract basis.

The Witness: Yes.

Mr. Guthrie: Well, let me just go a little further then.

By Mr. Guthrie:

Q. Your theory then is that if by contract certain expenses of the through service are paid in part by suburban service, or measured,— I will rephrase that question. Your theory is that if certain expenses of the through service payable over the Milwaukee Road, are measured in part by the number of suburban cars belonging to the Milwaukee Road using the station, it thereby becomes the duty of this Commission to fix suburban rates of fare that will cover the contribution to through service. Is that not correct? [fol. 304] A. I would like to give my own theory.

Exam. Fuller: First you answer the question.

Mr. Guthrie: Then the answer to the question must be no.

Exam. Fuller: By the way, were these your exhibits?

The Witness: Exhibit 14 was my exhibit, yes, sir.

Exam. Fuller: Were 29 and 30 yours?

Mr. Guthrie: No, Olson's.

Exam. Fuller: Well, Exhibit 25 in the old case was yours.

The Witness: Yes.

Exam. Fuller: I wondered how you got from 42,283 out of pocket basis, to this on the basis of 75,374.

The Witness: I think I can give you the figures. You are interested in the figures which go to make up the 75,374 on out of pocket basis.

Exam. Fuller: That is right.

The Witness: They are made up of maintenance and operating expenses.

Exam. Fuller: Well, I got the operating expenses.

The Witness: To that you add the figure of interest, $22,994, property taxes, $13,399, payroll taxes, $2,531, and subtract amount of concessions of $5,833.

Exam. Fuller: Is there any mail head end stuff in that, in those operating expenses?

The Witness: If there is it would be in the $42,283. I am not sure.

[fol. 305] Mr. Guthrie: I do not think there is any mail now carried by suburban service.

Exam. Fuller: It just seems to me for the benefit of the parties, that the report of the Illinois Commission might

be a little off because it took the total expenses including taxes and went backwards. We really should start with $42,283 as your out of pocket cost on the express basis and then add your payroll taxes, and whatever other deductions for mail which it would be. I think that startled them when they got that down to such a low figure, $20,000 for six months.

Mr. Guthrie: As a matter of fact that hooks up very well. Not very far from the figure they gave in the 1950 case, actually. We claim, of course, that, in that other case and the Commission found some of those expenses included, well, expense of carrying mail when they had given up mail on the suburban service and some of the other expenses would go on just the same whether there was suburban service or not.

Exam. Fuller: Anyhow, you would agree on the basis of Exhibit 30, you should take $40,283 plus your $2,531, which is the payroll taxes, minus whatever deduction ought to be made for mail.

Mr. Guthrie: Yes.

Exam. Fuller: I think that is fair. And there also ought to be a credit for the revenue credit for that, wouldn't there?

The Witness: The revenue credit is really on an ownership basis, and if you eliminate other items on an ownership [fol. 306] basis you should also eliminate the credit on an ownership basis.

Exam. Fuller: Would there be any credit on an out of pocket then?

The Witness: I think the whole thing is out of pocket myself, but then——

Exam. Fuller: I am just taking it on the theory of Olson's exhibit. I guess as a matter of fact, you gave me $5,833 in there. I just wanted to understand how he worked that up.

Mr. Guthrie: We will have to add to the exhibits in the other case because there is an exhibit in the other case that reconciles that figure. The Protestant's Exhibit Q3, I have it in my hand, and we will have it copied and I think we will have to present several other exhibits, maybe as Exhibit 21A to put it in with the one that went in this morning. There are some of those that should be added.

By Mr. Guthrie:

Q. Now, in the last question Mr. Stephenson, I said if under the contract the amount charged the Milwaukee Road for a through service facility, or a non-service facility is measured in part by the number of suburban cars using the station, is your theory that the contribution of the suburban service, the amount measured by the suburban cars to the expense of operating the through service or non-service facility is the proper charge against the suburban service to be taken into account for rate making purposes. Now, do you understand my question?

[fol. 307] A. I am afraid I don't. It is pretty long and pretty involved.

Q. I am afraid it is. Let me split it up.

Mr. Merrill: I think I do and I want to make an objection so the Examiner can rule and he can go ahead and reframe it or else drop it in accordance with the ruling. I object to the question on two grounds. One, being they assume facts not in evidence in the proceeding, and secondly, they are asking Mr. Stephenson to usurp the functions of the Interstate Commerce Commission and tell them what he thinks the Commission ought to grant in the way of relief.

Exam. Fuller: Of course, he is a cost expert.

Mr. Merrill: That is correct, but not an expert as far as the Interstate Commerce Commission requirements.

Exam. Fuller: I think the question is rather argumentative. It boils down to this. His opinion, does he think the allocation of suburban service should be on a contract basis or actual use basis.

Mr. Guthrie: Well, I——

Exam. Fuller: Let me ask him that. Do you think it ought to be on a contract basis?

The Witness: Yes, that is the way our exhibit is prepared.

Mr. Guthrie: Irrespective, under the contract the amount paid is for through service facilities or suburban service facilities.

Mr. Merrill: That is a hypothetical question, is it not, [fol. 308] Mr. Guthrie?

Mr. Guthrie: I don't see what is hypothetical about it.

Mr. Merrill: That is objected to if it purported to be based on facts in this record.

Exam. Fuller: He may answer.

The Witness: I will have to have it again.

(Question read.)

Mr. Merrill: Off the record?

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

The Witness: I think we would have to say we are not concerned with how the Union Station Company uses the amount, the funds that the Milwaukee Railroad pays to it.

By Mr. Guthrie:

Q. Do your suburban trains carry any mail?

A. A small amount.

Q. Very little, isn't it?

A. Small amount.

Q. I notice that you have among suburban relievable expenses, $112,537.73 for mail handlers. What mail do those handlers handle?

Mr. Merrill: Just a moment, Mr. Examiner. I think it is understood and agreed by Mr. Guthrie that is a Chicago Union Station expense and not a Milwaukee Railroad expense he is now referring to. With that understanding there is no objection to the question.

[fol. 309] Mr. Guthrie: Well, I am not referring to that at all. I am referring to what you have in your column on Exhibit 14, as suburban relievable expenses, on sheet 7 of the exhibit.

Mr. Merrill: But, just to clarify it, Mr. Guthrie, doesn't that refer to the expenses of Chicago Union Station Company as distinguished from the expenses of the Milwaukee Railroad.

Mr. Guthrie: It refers to suburban relievable expenses and it is what you have in your account as supposed to be something you are saying if you don't have any suburban service.

By Mr. Guthrie:

Q. Do you know what type of mail those people handle, whether it is mail that goes on the through trains or suburban trains.

A. The net cost of the Chicago Union Station Company, which would be relieved if there were no suburban trains is $305,529.92. All the figures you see above that just complete calculations, but the fact of the matter remains that the Milwaukee pays $305,529.92 to the Station Company which it would not have to pay if it had no suburban service. What the Station Company does with that $305,529 is no particular concern of the Milwaukee Railroad.

Exam. Fuller: You admit there are a good many items there in this Exhibit 14 that do not relate to the suburban service.

The Witness: Oh, yes.

Exam. Fuller: And you would never have shown as charged to suburban service if it had not been for this contract. Is that not right?

[fol. 310] The Witness: I think we must remember, Mr. Examiner, that——

Exam. Fuller: Well, if this had just been the Milwaukee Railroad, then you would have followed a use basis in your apportionment between your suburban and through service, would you not, the same as you do out on the line.

The Witness: Very strictly, yes.

Exam. Fuller: So it is because of this contract that you have used this method shown in Exhibit 14.

The Witness: Yes.

Mr. Guthrie: Just one minute, and I think I am pretty near through with this witness.

By Mr. Guthrie:

Q. Now, go back to head end service just a minute. In the prior case Mr. Stephenson, in figuring the revenues and expenses attributable solely to passenger service, you included head end service, did you not?

A. We had a column for head end service, yes.

Q. I mean, just what is head end service?

A. Baggage, mail, newspapers, express, milk, if there was any.

Q. It is service rendered by cars of passenger trains that do not render service to passengers.

A. None passenger carrying cars, or parts of them.

Mr. Guthrie: I think that is all the corss examination at this time. I will say this, when some of this information comes in, it may call possibly for more questions, but that is all I have right now.

[fol. 311] Mr. Merrill: On that score Mr. Fuller, we furnished all the information Mr. Guthrie requested. I think it is up to him to complete his cross examination at this time so we can proceed with redirect.

Mr. Guthrie: I have no idea now of further cross examination except as may be brought up by the redirect, but there is a lot of information called for here and I don't even know what some of it is.

Exam. Fuller: You might want to ask some questions on it?

Mr. Guthrie: Yes, I don't know any right now, or I would ask them.

Mr. Gibbons: I can go ahead right now with what I have, but in view of the rather extensive cross examination today, I just wonder if I could wait until tomorrow morning, or do you want me to go ahead now. Most of this that I had in mind has been pretty well covered.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

We will adjourn to 10 o'clock in the morning.

(Whereupon, at 4:30 p. m., an adjournment was taken until 10:00 a. m., Tuesday, May 17, 1955.)

[fol. 313] [Title omitted]

TRANSCRIPT OF HEARING—May 17, 1955

Met, pursuant to adjournment, at 10:00 o'clock a.m.

BEFORE:

BURTON FULLER, Examiner.

APPEARANCES:

(Same as heretofore noted.)

[fol. 315] PROCEEDINGS

Exam. Fuller: Come to order, gentlemen.

Do you want to make a statement about the information called for the *the* Cost Finding Section?

Mr. Merrill: With respect to the information called for by the Cost Finding Section, the petitioner will be willing to produce such information, but due to the difficulty in reproducing portions of it, desires to offer such information at the hearing to be held in this proceeding next Monday, May 23, as Commission requested exhibits.

Exam. Fuller: Very well, let us proceed with the cross examination.

R. S. STEPHENSON, resumed the stand and testified further as follows:

Cross examination (continued).

By Mr. Gibbons:

Q. Mr. Stephenson, in response to a question to you yesterday, I believe you testified that the age of coaches in the suburban operations ranged from 1903 to 1928. Do you recall that?

A. There was such a question.

Q. I just want to clarify that. Doesn't Exhibit 9, as a matter of fact, show that the oldest coach in use in suburban operations was built in July, 1900?

A. Yes, coach 3304 was originally built in July, 1900.

Q. Now, in Account 317 on Exhibit 12, you claim an ex-
[fol. 316] pense of $237,603 for passenger coach repair. On the basis of 137 coaches in use in the suburban service that would approximate approximately $1800 per coach for repair, would it not?

A. I believe that is about right.

Q. Do you know how many coaches used in suburban operation were actually repairs during 1954?

A. I haven't the record with me.

Q. I realize that this computation is done on a system basis, but I wondered if you knew how many were actually repaired or rebuilt.

A. No, I haven't the record here.

Q. You do not know whether or not the amount of $237,603 as shown on Account 317 includes any expenditure for the rebuilding of suburban coaches?

A. I don't know because I don't know what cars went through the shop.

Q. Would you please refer to Exhibit 10, Milwaukee Road Exhibit 10, column 3. Are the tickets shown in column 3 on which the number of passengers are based, are the tickets there shown an estimated figure or actual figure?

A. It is a computed figure. Column 3 does not cover the number of tickets. It is the number of rides.

Q. Well, to compute the number of passengers or number of rides, did you have the actual number of multiple ride and commutation tickets from which to make your computation?

[fol. 317] A. Yes.

Q. Is that also true of column 4, or is column 4 derived from column 3?

A. No, it is true of column 4 as well.

Q. But with respect to column 5, some of those figures are estimates and some of those are actual. Is that correct?

A. No, column 5 covers one way, round trip and cash fares. Now, the one way and round trip are covered by tickets which were counted. Likewise, the number of cash fares collected on trains are subject to count and were counted.

Q. Was—well, what is this legend here under B. "esti-

mated at the same percentage of commutation passenge as for the year 1941." What does that mean?

A. That applies only to the years 1948, 1949, and 1951.

Q. And——

Mr. Merrill: Did you say B or D, Mr. Gibbons?

Q. "B".

A. Oh, B refers only to the year 1940.

Q. Then during the year 1940, one way trip and roun trip fares were estimated.

A. Estimated on the basis of the year 1941.

Q. And in several other years the one way, round tri and cash fares were estimated as is shown by the legend C and D. Is that correct?

A. Yes.

[fol. 318] Q. Why is it in some years you estimated tha type of passenger and in other years you have an actua count?

A. Well, this is something that has been provided for The procedure has been provided for in advance. We have it since 1951.

Exam. Fuller: You had the actual information of prio years too?

The Witness: That's right, where it was provided fo before hand. It is something that isn't so easy to go back and develop.

Exam. Fuller: Were those actual figures for prior years prepared in connection with some case?

A. Yes.

By Mr. Gibbons:

Q. You mean you do not keep an actual record of the one way, round trip and cash fare riders as a general prac tice. Is that correct?

A. Not for the suburban service alone. Of course, we have it for all types of traffic, but——

Exam. Fuller: You have kept it actually since the be ginning of 1952.

The Witness: Yes, sir.

Exam. Fuller: Beginning with 1952 you kept the actua count.

The Witness: Yes.

By Mr. Gibbons:

Q. In each of the cases in which the number of one way, round trip and cash fare riders was estimated, you used different percentages. Why were different percentages used [fol. 319] in different years to make this estimate?

A. Well, for example, in the year 1940, the percentage used was that for the year 1941, the nearest year. In the years 1943, 1944, 1945 and 1946, the percentage used was that for the year ended June 30, 1947, which we merely apply that percentage to preceding years for which actual information was not available.

Q. In other words, you applied the nearest——

A. Nearest year, yes, sir.

Q. That you did have an actual count for.

A. That's right.

Q. In this column 3, which includes commutation passengers for Milwaukee and Terra Haute, does that include, in addition to Chicago, anything else?

A. Just the three points.

Q. There has been an increase in commutation multiple ride ticket passengers in Chicago suburban service in 1954 as compared with 1953, and also on the system basis. Referring to column 3 there also has been an increase. Do you know what the percentage of increase of suburban passengers in the Chicago area has been compared with the commutation and multiple ride passengers on the system basis?

A. That can be calculated from the figures we have here. Would you like me to calculate them?

Q. The percentage increase in the Chicago area has been much greater than on the system basis, has it not?

[fol. 320] A. I think that is true. Other than Chicago the commutation passengers are very few.

Q. That would not be necessary to compute it. Refer please to the last page of Exhibit 12, where you show express revenues in the amount of $26,601 and you say this was developed. Would you say how that was developed?

A. The formula used by the baggage, mail, express and milk revenue is a car foot mile basis. In other words, you

would develop the car foot miles of express traffic in suburban service. The car foot miles in all system express traffic. Find the relation of the first to the second figure and apply that to a system express revenue.

Q. On Exhibit 12, you also show revenues from mail handling in suburban operations of approximately $2,000. And on Exhibit 14, Account 273, and other accounts relating to mail, you show approximately $150,000 for mail expense chargeable to the suburban operation. Do you think that is a fair charge for suburban operations in view of the fact that you have a revenue of only $2,000 from mail.

A. The figure of $150,000 which you quote, the apportionment of the amount of $305,529.92 which we maintain is relievable expenses if we had no suburban service. We do not admit that the $150,000 is related to mail service on suburban trains. We are not concerned with how the Station Company uses the money which we pay as rent.

[fol. 321] Q. You do admit, do you not, there should be a close relationship between the revenues earned and the expenses incurred in connection with the earnings.

A. Not for items singled out as you have done.

Q. What about red cap service. Is red cap service used to any extent by suburban riders?

A. To some extent.

Q. To a very limited extent would you say? Isn't there a charge of $23,000 in Account 373, an expense chargeable to the suburban operation?

A. In the detail of how the Station Company might have applied the $305,000 of rent there is no amount included for red cap service.

Q. What is this figure of $23,431.59 shown in column 9, Exhibit 14, sheet 7, under Account 373?

A. That is apportionment of the total of $68,075 for both through and suburban service. However, that is in the fully distributed cost and not in the suburban relievable expenses.

Q. That is computed solely on the basis of ownership, not on use, right?

A. That is on an ownership basis.

Q. Now, yesterday Mr. Stephenson, I believe you testi-

fied Exhibit 13 shows that in Account 331, under depreciation you have the figure of approximately $64,992, or $194,976 for the year 1954 on an annual basis charged to [fol. 322] suburban operations. And in the Annual Report submitted to the Illinois Commerce Commission, there was a sum of $124,460 for depreciation for the entire Illinois operation. Could you explain why there should be this wide difference?

A. In the first place, you have taken the figures for the four months, September to December, and multiplied them by three to arrive at a year basis. A year basis as charged in the account is shown in Exhibit 12. In other words, it would not be proper to take these four months where we have new diesels, multiply by three and say that is the year figure since some of them were acquired as late as August.

Q. Well, even if you used the year figure, that discrepancy would still exist, would it not?

A. I wouldn't call it a discrepancy. It is a change in method in the development of the state figure.

Q. The figure for depreciation on Exhibit 12 is approximately $151,000.

A. $152,432.

Q. It is still much greater for the suburban operation as claimed on Exhibit 12 than was shown in the annual report for the entire State of Illinois. Is that not correct?

A. No, it isn't correct. The column 331, equipment depreciation appearing on page 703 of the report to the State of Illinois for the year '54, shows expenses related solely to passenger and allied services of $287,557 and expenses [fol. 323] apportioned to passenger and allied services of $124,469. In other words, the proportion assigned to suburban service is much less than one-half.

Q. Aren't you comparing the figure of $152,000 for suburban operations as against $124,460 for the statewide passenger operations in Illinois?

A. No, that wouldn't be right.

Q. Why isn't it?

A. In order to get the amount for passenger and allied services you must combine columns D and F.

Q. In Exhibit 13, Train Fuel, you base the amount upon studies made in December of '54 and January of '55. I

know there has been some information requested on that but would you state why those two particular months have been selected as the basis for the study?

A. I didn't hear you at first. Were you talking about fuel now?

Q. Yes, in Account 394, which is based upon studies made in December of '54 and January of '55. My question is why were those two particular months selected?

A. The study in December, 1954, covered the period December 7 to 19, inclusive. During this period a record was maintained of the diesel oil consumed by suburban locomotives by individual trains and locomotives, by means of a meter installed at the fuel tank at Western Avenue Engine House, where these locomotives take off.

The test showed an average consumption on the West [fol. 324] Line to Elgin of 3.589 gallons per locomotive unit mile, and on the North Line, 3.532 gallons per locomotive unit mile. This test was for a winter month.

In order to determine the amount of oil consumed for heating trains, and idling of motors, another test was made on January 11, 12, 13 and 14, 1955. In making this test the fuel tank was filled at Western Avenue before starting the trip and a flow meter installed to obtain exact gallons used by the boiler. At the end of the run the fuel tank was again filled and the diesel oil metered into the tank.

This will all be covered in a later exhibit. I can go on if you want me to.

Q. That is all right. Is it not true though, that fuel consumption is greater in the winter months than it is say in the fall or spring or summer? Is that a fact?

A. The primary difference though in our diesel operations is the heating of the trains.

Q. Is it true that more fuel is consumed during the winter months than during the fall or summer months?

A. I am not qualified to say.

Q. One further question with respect to repairs. Do you know whether or not the Milwaukee Railroad charges to current operating expenses the cost of remod-ling or rebuilding passenger coaches? Whether it has during the year 1954?

A. I don't know just what cars were put through the [fol. 325] shops and what work was done on them. But, as a general proposition the only thing charged to repair accounts would be that that under the Interstate Commerce Commission classification would be classified as repairs. In some cases they may be just light running repairs and in some cases it might be a heavy shopping.

Exam. Fuller: On equipment, were there any charges to A and B, 1954?

The Witness: Yes, but I doubt if there was a very large charge in connection with passenger cars.

Exam. Fuller: Really was negligible, was it not?

The Witness: I can tell you. The expenditures for additions and betterments on passenger cars for the year 1954 chargeable to Account 701, road and equipment property, was $601,830.

Exam. Fuller: That is for the entire system?

The Witness: For the entire system, for all passenger equipment.

Exam. Fuller: Do you know what it was for suburban?

The Witness: No, I don't.

Mr. Gibbons: That is all I had.

Exam. Fuller: Any redirect?

Mr. Merrill: Yes, sir.

Redirect examination.

By Mr. Merrill:

Q. I would like to cover Mr. Gibbons's cross examination first, Mr. Stephenson. If you will refer to sheet 7 of Exhibit 14, you will recall that Mr. Gibbons mentioned a figure [fol. 326] of $150,392.94, roughly $150,000, as the expense of mail handlers. You referred to that as part of the $305,529.92. Inasmuch as the figure referred to by Mr. Gibbons appears in column 10 and the figure you referred to is the total of column 11, do you wish to correct your statement in that regard?

A. Yes, the figure of $150,000 I see is not included in the $305,529 but in a total of $408,303 appearing in column 10.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

By Mr. Merrill:

Q. Now, with respect to the fuel costs, Mr. Stephenson, do the fuel costs which you have assigned to the suburban operation reflect any fuel for heating the cars during the summer months or during the warm weather months, or is there any allowance for fuel of that kind?

A. No allowance during the summer months.

Exam. Fuller: What months do you allow for heating?

The Witness: November, December, January, February, March and April. As a matter of fact, we had steam in our train this morning.

By Mr. Merrill:

Q. I would like to turn to the matters covered by Mr. Guthrie in his cross examination yesterday. Referring to Exhibit No. 12 and 13 Mr. Stephenson, what is the basic difference between your approach in the present proceeding in computing out of pocket costs and your approach in the [fol. 327] proceeding before the Illinois Commerce Commission in Docket 40486, which I believe is referred to sometimes as the 1952 case, and in earlier cases?

A. The basic difference is the use of the Interstate Commerce Commission cost formula designated as Railway Consumption 10-43.

Q. You refer to the use of that formula in the present proceeding, do you not, sir?

A. I do.

Q. Will you proceed?

A. The principal difference, I believe, is in the inclusion under the Interstate Commerce Commission formula of expenses which over a period of time could be avoided if suburban service was not required. In the 1952 case and the case preceding that, we did not go beyond the expenses which could be immediately avoided. We had a reason for

that in that the total expenses were so far in excess of the revenues and in excess of the increase in fares which we were seeking, that there was no point in adding to the expenses, particularly for items about which there might be some difference of opinion.

Exam. Fuller: Would this be a fair statement? In your prior studies you charge to the suburban service what might be called solely related expenses.

The Witness: Solely related and immediately relievable I think would generally cover it.

Exam. Fuller: In other words, where there were joint [fol. 328] expenses at least in some instances, you did not charge any portion of that to the suburban service.

The Witness: That is true.

Exam. Fuller: While under you present method, under this theory of what would not be required if you did not have the suburban service, you charge certain amounts which are solely related and also a certain portion of the joint expenses. Is that nor true?

The Witness: Yes, the use portion.

By Mr. Merrill:

Q. Now, to the extent that in the present proceedings certain items of expense are included which were not included in earlier proceedings, would that mean that in the earlier proceedings the railroad was not seeking to recover those items of expense?

Mr. Guthrie: I do not understand the question. Will you read it?

(Question read.)

Mr. Guthrie: I think I will have to object. I don't know what he means.

Mr. Merrill: Let me start over and I will break it down and maybe it will not be objectionable.

Exam. Fuller: I think we ought to let those cases speak for themselves.

Mr. Guthrie: I was going to say it is a conclusion.

Exam. Fuller: I do not think he can evaluate the prior [fol. 329] proceedings.

Mr. Merrill: I think he can evaluate what the railroad was asking for in those prior proceedings.

Mr. Guthrie: The exhibit will show.

Mr. Merrill: Mr. Fuller, if we eliminate everything in the case that came up in the prior case, I suspect 90 per cent of Mr. Guthrie's case will be out the window, so I ask to proceed on this line. If it is objectionable I am willing to have it thrown out, but not on the basis of its having been covered in a prior case.

Exam. Fuller: It is objectionable the way it is phrased.

By Mr. Merrill:

Q. I understand there are items of expense included in the present proceeding which you did not include in earlier cases.

A. That is right.

Q. In this proceeding the railroad is attempting to increase its revenues so as to recover a portion of all of the expenses which you have listed in this proceeding in Exhibits 12 and 13. Is that correct?

A. That is true.

Mr. Guthrie: I think the question is objectionable. I do not know whether it makes much difference.

Mr. Merrill: It is preliminary to this one which is the real one you will want to object to, Mr. Guthrie.

By Mr. Merrill:

Q. In the earlier proceedings was there any attempt to [fol. 330] recover the costs which are additional in this proceeding, but were not included in the earlier proceedings?

Mr. Guthrie: I will object. The earlier proceedings speak for themselves. I cannot see any point.

Mr. Merrill: If we have that understanding I am perfectly happy, Mr. Guthrie, but it may come back to haunt you.

Mr. Guthrie: Well, I will risk it.

Exam. Fuller: Sustained.

By Mr. Merrill:

Q. Now, the question was raised on cross examination, whether your exhibits referred to any publication of the Interstate Commerce Commission formula, or otherwise, other than the railroad Maintenance Study, Engineering Section of the Bureau of Valuation of the Interstate Commerce Commission, dated February 15, 1953. I believe you answered your exhibit did not make reference to any other study or formula. Did you in your oral testimony make reference to any other study or formula, and I refer particularly to page 56 of the record, which I now hand you.

A. In introducing Exhibit 12, I stated, "These schedules follow very closely the formula providing for a comparison of revenues with expenses for suburban and commutation services, designated as Rail-Commutation 10-43, which was developed by the Cost Section of the Bureau of Transport Economics and Statistics, Interstate Commerce Commission for the purpose indicated in its title, and which was distributed in January, 1954."

[fol. 331] Q. Do you wish the Commission to give as much weight to your oral testimony as to your exhibit, sir?

Mr. Guthrie: Oh, just a minute. I will object to that.

Exam. Fuller: Sustained.

By Mr. Merrill:

Q. Now, you were asked regarding the amounts charged to accounts 214, 249, 404 and 405 in this proceeding as compared to the amounts reported under those account numbers to the Illinois Commerce Commission for all passenger trains operating Illinois. I wonder if you can give the reasons for the differences in figures, as they have been pointed out in this proceeding.

A. The difference is a matter of difference in formula. The Illinois Commerce Commission, nor does any other state commission that I know of, prescribe any rule or separation of expenses common to operations in two or more states.

In our case, we divide the expenses of divisions wholly within the state directly. Divisions overlapping state lines are prorated as between the affected states on various

bases. These are set forth on page 706, I believe, of the Annual Report to the State of Illinois, Illinois Commerce Commission.

Exam. Fuller: 706 is not included in the exhibit.

Mr. Guthrie: Yes, it is, but you cannot see the 706 the way it is put together. Schedule 720 at the end of it. You have subdivision 7 and below that, starting with line 190.

Exam. Fuller: I see it.

[fol. 332] A. Following the description of the bases used, the statement is made that apportioning on a mileage basis is purely arbitrary and has been adopted for want of any other basis.

Exam. Fuller: You found another basis in this proceeding, did you not?

The Witness: That is true, and the reason is, of course, that we are localizing the area of suburban service. We do not have a case where we have an allocation between two states, except that small portion that is in Walworth. In apportionment on a mileage basis, for example, under maintenance of way, which is on the basis of track miles, the expenses of maintaining interlockers in the Chicago area is apportioned to Illinois and possibly Indiana, Wisconsin and Iowa, although the interlockers are, you might say dense around the Chicago suburban area. There are quite a number of them. That is the main reason for these differences.

I might also call your attention to the fact that these differences work the other way as well. I think Mr. Guthrie made the point that about half our train miles in Illinois were through trains and half suburban trains. The inference was that because of that one-half of the expenses, or that the expenses assigned to the State of Illinois should be at least twice the amount we had in our Exhibit 12 or 13 for suburban costs.

Now, the reverse is true. For example, for Account 235, shops and engine houses in Exhibit 12C, the total of the Account 235 is $12,628.

[fol. 333] Exam. Fuller: Where is that?

The Witness: It is a combination of an item of $6,000——

Mr. Guthrie: 235 you are talking about, in what exhibit?

The Witness: Exhibit 12C, Mr. Guthrie. Combine $6,979 in line 22, with $5,649, which appears just below.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

The Witness: The sum of the two amounts there shown for Account 235 is $12,628. If you will refer to Account 235 appear- in Schedule 720, page 703 of the Annual Report to the Illinois Commerce Commission, the total expenses for this account related solely to passenger service is $14,745 and the total apportioned to passenger service is $43,082, or a combined total of $57,827. This is between four and five times the amount charged to suburban service. I merely use this to illustrate the point that it works both ways.

Exam. Fuller: Is that because the suburban engines take less engine house service?

The Witness: It is really because the measure of apportionment in the state reports is a very broad measure. It is on track miles.

Exam. Fuller: Do you have any idea whether the excesses, deficiencies kind of overset each other so on the whole it is about right?

[fol. 334] The Witness: Oh, I would think so, but I have made no such calculation.

By Mr. Merrill:

Q. Reference was made to a reduction in operating expenses since the year 1952. What is the principal reason for the reduction in such expenses?

A. Primarily the reduction brought about by the substitution of diesel locomotives for steam locomotives has brought about a reduction in repair costs and engine house expenses, and in fuel.

Q. Do you know of any basis to anticipate further reductions in expenses in the foreseeable future?

A. I know of none.

Q. Have the reductions and changes since 1952 resulted in elimination of the railroad's suburban passenger deficit?

A. It has not.

Q. Now, if we can turn to the Chicago Union Station phase of this case, please. It was testified that after 1943 and until 1952, the railroad used the Olliphant formula to determine the amount chargeable as Union Station expense in its suburban operations. Why did the railroad in the 1952 case and in this proceeding, use the relievable cost basis instead of the Olliphant formula?

A. It is our belief that since the amount of relievable expenses can be accurately determined by relation to the amount of money paid to the Station Company, that the [fol. 335] Olliphant formula, or any other formula of that sort was not required.

Q. Does any formula serve a purpose in determining expenses which can be otherwise accurately determined?

A. No.

Q. Are you familiar with the accounting procedures of the Chicago Union Station Company?

A. Yes.

Q. State how you acquired that familiarity.

A. I have been a member of the Standing Audit Committee of the Chicago Union Station Company for 10 or 12 years. Audits are made of the Station Company's accounts every one or two years, and in conjunction with the other proprietary lines, and I am fairly familiar with the records maintained and how they are maintained.

Q. Are some of the expenses incurred by the Chicago Union Station Company, incurred for the purpose of accommodating through passenger service of the railroads, as well as suburban?

A. They are.

Q. Now, is the portion of the rent which is based on the use of the station by the Milwaukee Railroad suburban trains, used to defray a portion of such expenses that I have just referred to?

A. Yes.

Q. Then is the portion of the rent which is based on the use of the station by the Milwaukee Railroad's through trains likewise used to defray expenses which are incurred [fol. 336] by the Chicago Union Company in providing facilities for suburban trains?

A. That is true.

Exam. Fuller: I do not understand what you mean by that. You mean the money is all in one pot?

The Witness: That is true.

By Mr. Merrill:

Q. Do the suburban cars receive any less service than are received by the through cars, as far as the station facilities are concerned?

A. They do not.

Exam. Fuller: Do you base that on any time study? What do you base that on?

The Witness: Let us say it is observation more than anything else. I have been in the station for about 18 years.

Exam. Fuller: So far as the use of track facilities, you have not had any quarrel among you about this four-fifths to one, have you?

The Witness: Oh, no, that is a matter of contract.

Exam. Fuller: You do not know the origin of that?

The Witness: It originated in 1915 when the first contract was made. That is 40 years ago.

Exam. Fuller: We have had a number of other cases in which I think it was testified it was based upon the fact the suburban cars were in the station less time. You do not think that was the basis here?

The Witness: No, I do not think that was the reason.

[fol. 337] Exam. Fuller: Anyhow, you have not made any study of that.

The Witness: Just my observation.

Mr. Merrill: In that connection, Mr. Examiner, I would like to refer you to the testimony of Witness O'Toole, that suburban cars are backed down early in the afternoon and kept in the station a considerable length of time prior to departure, as throwing some light on the question you have raised.

Exam. Fuller: Well, I will read that.

Mr. Merrill: If we may have two or three minutes, sir, before I get into this next line of questioning, I may save a little bit of time.

Exam. Fuller: We will take a recess.

(Short recess.)

Exam. Fuller: On the record. Let us proceed.

By Mr. Merrill:

Q. What is the actual cost per suburban car of the Milwaukee Railroad for the use of the Chicago Union Station facilities?

Mr. Guthrie: What is that question?

(Question read.)

A. $4.34.

Exam. Fuller: What does that include, all costs of the station?

The Witness: The cost affected by use.

Exam. Fuller: All of the costs apportioned on use divided by the number of cars.

[fol. 338] The Witness: Divided by number, yes, sir.

By Mr. Merrill:

Q. What is the comparative cost per through car of the Milwaukee Railroad for the use of the Chicago Union Station facilities?

A. $5.14.

Q. Is that due to the adjustment in computing a suburban car as the equivalent of four-fifths of a car?

A. Yes.

Q. Is there any non-proprietary railroad which uses the Chicago Union Station Company?

A. The Gulf, Mobile and Ohio is a non-proprietary railroad.

Q. On what basis is the rental computed for the use of the Chicago Union Station?

A. Part of the rental is computed on the basis of the relative car count of its cars as compared with the total car count of all cars using the station, and the remainder is apportionment of the interest and taxes which is never less than seven per cent. The actual use though however, is about seven per cent.

Q. Now, for purposes of comparing the cost per sub-

urban car to the Milwaukee Road of using the Union Station, what is the cost per suburban car to the Gulf, Mobile and Ohio Railroad for using the Chicago Union Station?

A. $9.44 per car.

Q. That is the Gulf, Mobile and Ohio figure?

A. Yes.

[fol. 339] Q. As compared to what cost for the Milwaukee Railroad?

A. $5.14 for a through service and $4.34 for suburban service.

Q. Now, if the Milwaukee Road were to take the amount of $305,529.92 which it pays to the Chicago Union Station Company by virtue of its suburban cars which it operates in and out of the station, and were to find another method of allocating that cost to the suburban service, such as a passenger count basis, what would be the effect on the amount charged against the suburban service?

Mr. Guthrie: I object to the question. I don't conceivably see what it has to do with this case. I do not understand, but I do not see what it has to do with what we have here.

Mr. Merrill: If Mr. Guthrie does not understand, I do not see how he can object.

Mr. Guthrie: That is the reason. It is incomprehensible.

Mr. Merrill: We will see if the witness understands it.

Mr. Guthrie: I object to the question.

Mr. Merrill: I will answer the objection. Mr. Examiner, the attack has been made on the amount charged by the railroad to the suburban service as exorbitant, or excessive, or unreasonable or improper, or in other words, too high.

Now, is there any reason at all, Mr. Examiner, why the petitioner should not be allowed to show what alternative bases would produce in the way of cost to the suburban service. That is our position, sir.

Mr. Guthrie: Let me be heard. In the first place, there [fol. 340] has been no attack on any such ground. It is a matter of contract between the railroads and we do not care what their contract is. We are talking about expenses of the suburban service and expenses of the other services and the rates charged to each service should be apportioned according to the expenses of those services. That is the theory. That is the relationship you look to.

Now, the Milwaukee Railroad pays a certain amount to the Union Station. It comes from one pot. It goes into one pot. And for what services is it used? Part of it is used for through service as he just testified. Part is used for through service, part of it is used for suburban service, and part of it is used for non-service expense, such as headhouse, office building, and so forth. Nothing to do with any service.

The Milwaukee Road has its offices in this building. Nothing to do with service. The money that goes in there is used for various services. The expenses of those services should be considered in fixing rates to be charged for those services, but the fact that part of the money that the Milwaukee gets from the suburban service is used to pay for head house expense, does not mean that the suburban commuters' rate should be fixed on that basis. It has nothing to do with it. No connection with it. Never thought of such a thing in the 1952 case.

We do not care whether it is on a passenger count or how the Milwaukee Railroad gets the money it pays for suburban facilities. The operating expense is the expense of [fol. 341] operating the suburban facilities and nothing else. The fact that suburban goes to something else has nothing to do with suburban rates. That should be charged to through service. The railroad should be reimbursed in through receipts for all moneys that go for through purposes, whether they actually use suburban moneys or not.

It is a charge against the through service, whether it is measured by suburban cars or how it is measured, whether it is done by a flip of the coin. If it is a through service facility, it is a through service expense and the fact they are—the fact that their contribution is measured by suburban cars does not make any difference.

As a matter of fact, it is a question of allocation between the various railroads. It is just a rule of thumb devised by this contract. It has nothing to do with whether it is a suburban service charge or not.

It was always recognized. It was recognized in the 1952 case until the end of the case they got another idea and put in this renewable expense theory which was not used, and was not used in the Interstate Commerce Commission

case back in the early '40's either. But, there is no question whether it is exorbitant, whether it is too much or too little. It is a question of theory, of allocation of expense to suburban and through service, and the source of the money that is used to pay that expense has nothing to do with the allocation.

Exam. Fuller: Miss reporter, read that question again.

[fol. 342] (Question read.)

Mr. Guthrie: What difference does it make?

Mr. Merrill: Mr. Examiner, I submit there is nothing in Mr. Guthrie's long speech here that showed why that question was improper. I think we are certainly entitled to show any measure to test the reasonableness of that charge by alternative basis of computing how the charge shall be made. And we will show that any other basis than the one we are using will result in a much higher charge to the suburban service than the car count basis. And that is the heart of the whole case Mr. Examiner.

Mr. Guthrie: What is? The only question here is what expenses are related to suburban service. The question is wholly irrelevant. We could think of all sorts of theoretical bases. If they use suburban cars as two cars instead of three-quarters of a car it would be more too. But what has that got to do with our case?

Mr. Merrill: One theoretical basis is the Olliphant formula Mr. Guthrie is so fond of, Mr. Fuller.

Mr. Guthrie: I do not care what formula you call it. I believe in a formula that divides the facilities, the actual expense incurred through its character as through service expense, suburban service expense or non-service expense. I do not care what you call it. I do not care whether you call it the Olliphant formula or what formula you use.

Exam. Fuller: Off the record.

(Discussion off the record.)

[fol. 343] Exam. Fuller: On the record.

By Mr. Merrill:

Q. Mr. Stephenson, referring to the total figure shown in column 4, on sheet 9 of Exhibit 14, of $1,186,404.34 which

represents the expenses charged to the Milwaukee Road on a use basis for the use of the Chicago Union Station for both suburban and through passenger service. Will you state, please, what the allocation of such expense would be to suburban service if made on a passenger count basis rather than a car count basis.

Mr. Guthrie: I will object unless he tells us what is the passenger count is and the car count.

Q. Will you please include the information which Mr. Guthrie has referred to?

Mr. Guthrie: I object on the grounds I just stated before, but I object also on the grounds we want to know what he bases it on.

Exam. Fuller: The objection is overruled. He will have to show the basis.

A. The approximate ratio of suburban passengers using the Chicago Union Station to through passengers,——

Mr. Guthrie: What is the number of each?

A. Is three and a half to one.

Exam. Fuller: Three and a half through to one suburban?

The Witness: Three and half suburban to one through.

Mr. Guthrie: That does not give the number of passengers.

Mr. Merrill: If you will bear with him Mr. Guthrie, he will get it all in.

[fol. 344] The Witness: Based on reports currently prepared by conductors on through trains, and on suburban trains, the number of through passengers over a year's period is 1,374,764, and the number of suburban passengers is 4,566,251. This is about three and a half to one.

On that basis the amount allocated to suburban service would be $925,456 instead of $408,303 as appears in column 10, line 25, of Exhibit 14. The amount allocated to through service would be reduced from $778,100.90 as it appears in column 7, to approximately $261,000.

Exam. Fuller: Now, as to these expenses which are attributable to through and suburban service, could we use that North Western formula of five suburban passengers to one through passenger?

The Witness: Well, I think in our case it is, the ratio is a little less. In other words, I think it is more like 3½ to one instead of five to one.

Mr. Merrill: He is speaking of the actual count.

Exam. Fuller: I understand that, but I am trying to get some kind of equation.

Mr. Merrill: You are talking about some kind of equation, are you not, equating the numbers?

The Witness: Oh, I should think so. I am not familiar though with the Northwestern formula.

Exam. Fuller: It may be that you would apply—that if you could apply some basis like that, you folks are not too far apart.

[fol. 345] By Mr. Merrill:

Q. Mr. Stephenson, can you make a similar allocation were the expenses to be charged not on a passenger count basis but on a train count basis?

Mr. Guthrie: Mr. Examiner, we are getting awfully far afield taking a hypothetical way of apportioning these.

Exam. Fuller: I do not think I am going to advocate a train count.

Mr. Guthrie: Some trains might have two cars and some might have 14. Ultimately we will have a recross examination that will take two weeks.

Mr. Merrill: Mr. Fuller, one car might have one passenger and one car 100 passengers.

Mr. Guthrie: You got a passenger count a minute ago. You got a car count. What does a train count have to do with it? It is purely a hypothetical thing. It has nothing to do with any situation.

Exam. Fuller: I do not think it would be helpful.

Mr. Merrill: We only want to show, Mr. Examiner, the basis we use for assigning expenses work out more favorably than these alternative bases. With that understanding, if Mr. Guthrie wants to concede it, we will pass on.

Mr. Guthrie: I will concede nothing. But, I suppose when they arrived at and made their contract with the other railroads, they arrived at what they thought was some reasonable way of dividing this expense. Now, if there is a [fol. 346] better way, they should have put it in the agree-

ment with the other railroads. What has that got to do with it. It is a purely artificial contract basis they are talking about here. It may be one contract or another. They made this contract. Possibly we ought to have the contract. I hesitate to ask for it. I don't want to encumber the record. Possibly we ought to have it. They have referred to the contract all the time. Maybe we better have the contract.

Mr. Merrill: You have copies of it. Put it in, Mr. Guthrie.

Mr. Guthrie: It is not in evidence here.

Mr. Merrill: Well, put it in.

Mr. Guthrie: I do not want to put it in. It is up to you to put it in.

Exam. Fuller: We are just getting into argument now. I do not think it would be of any value here. I suppose he has a right to make the comparison if he wants to. Do you want to pursue it?

Mr. Merrill: I think I can dispose of it in one short question, if I may.

By Mr. Merrill:

Q. What is the ratio of the number of through trains to suburban trains operating in and out of Union Station?

Mr. Guthrie: I object as immaterial.

Mr. Merrill: That is the only question I will have on it and I am dropping the subject after that question.

Mr. Guthrie: I object to it.

Exam. Fuller: I think that question is all right.

[fol. 347] A. The number of suburban trains for a year is 19,032. The number of through trains for a year is 10,192, a ratio of about two suburban trains to one through train.

Mr. Guthrie: What is the number of through trains?

The Witness: 10,192.

By Mr. Merrill:

Q. What is the interest of the Milwaukee Road in the Chicago Union Station? What is the extent of its ownership?

A. It has a 25 per cent ownership.

Q. Is the Chicago Union Station a separate corporate entity?

A. It is.

Q. And does the Milwaukee Road have a controlling interest therein?

A. It does not.

Q. If the Milwaukee Railroad did not have the privilege of using the Chicago Union Station Company, what would be the minimum cost that would be required to furnish a station adequate to handle the suburban traffic of the Milwaukee Railroad in the present location of the Chicago Union Station?

Mr. Guthrie: Will you read that?

(Question read.)

Mr. Guthrie: Now, I will object to that question. This witness is not qualified to answer. He is an accountant, and that is a conclusion that has to be based on a great many statistical formulae and papers. How can he answer that question?

Mr. Merrill: Why don't you wait and see, Mr. Guthrie? [fol. 348] Mr. Guthrie: Because he is not qualified to answer it. It calls for expert opinion.

Exam. Fuller: The objection is sustained.

Mr. Merrill: At this point, Mr. Examiner, may I make an offer of proof for the record as to what the witness would testify to if allowed to testify?

Exam. Fuller: Yes.

Mr. Guthrie: How can there be any—well, what does he know about it.

Exam. Fuller: I sustained the objection.

Mr. Merrill: I thought you had sir but there was quite a bit of noise going on and I thought I would wait for it to subside.

I wish to make the following offer of proof. That the witness would testify as follows concerning the cost of providing a station sufficient to accommodate the Milwaukee Road suburban traffic, on an annual basis.

Under the heading of Maintenance and Operation, a minimum cost for labor of $104,820; a minimum cost for material and supplies $16,200; for all other maintenance and operation costs such as heating, lighting, injury to persons,

loss and damage, heat and welfare insurance, $6,960. Total maintenance and operation cost of $127,980.

Now, for payroll taxes, $6,000; property taxes, $191,835 based on the following figures. A total investment in station building and in property north of the present concourse [fol. 349] which extends as far north as Lake Street, $16,216,000 on which the tax rate of $11.83 per $1,000 valuation would be assessed to arrive at the figure of $191,835. Total maintenance operation and taxes totaling $325,815.

In addition to that figure the witness would testify that interest on the investment of $16,216,000 at three per cent would equal $486,480. That depreciation on the station building, $20,000, platforms and so froth, $50,000. A grand total minimum cost for providing a facility to handle the suburban traffic of the Milwaukee Railroad in Chicago of $882,295.

That is our offer of proof, sir.

Mr. Guthrie: I object to the offer.

Mr. Merrill: No further questions.

Exam. Fuller: Of course, that would be an entirely new case. We would have to start all over.

Mr. Merrill: It is just to measure the reasonableness of what we are charging.

Exam. Fuller: I now. You made your offer of proof and I sustain the objection.

Mr. Guthrie: I will start in on recross, I guess.

Exam. Fuller: I guess you may, if you have some questions.

Mr. Guthrie: Yes, I have.

Recross examination.

By Mr. Guthrie:

Q. Will you please look at your Exhibit 14. You have on a use basis column totaled all the expenses of Union [fol. 350] Depot that are not paid on percentage of ownership. Is that not correct?

A. That is right.

Q. Well, just take these. What is the general station and concourse? What does that consist of? I am looking at sheet 7, columns 2, 3 and 4.

A. Station and concourse includes what is called the head house.

Q. What is called the head house? What is the head house?

A. The main station building.

Q. Where the waiting room is, restaurants, and so on?

A. Well, you know what the main station building is, don't you?

Q. Yes. What is the concourse?

A. The concourse is the area leading to the tracks.

Q. The biggest part of the general station is the part that is used by the waiting room, is it not?

A. That is the first floor.

Q. What else are you including in there, the offices?

A. That is part of the main station building.

Q. What is the percentage of the office space used by the through passengers as compared with the suburban passengers?

A. I don't know.

Q. What is the percentage of the waiting room space used by the through passengers as compared with the suburban passengers?

A. I don't know that either.

Q. You divided those expenses 3½—in your hypothetical [fol. 351] question—3½ of suburban as against one to through, did you not?

A. Yes.

Q. What offices are there in the Union Station building under that $160,908 item.

A. Which item are you speaking of?

Q. I am still on the same item.

A. And your question was what?

Q. What offices are there, offices of the Milwaukee Road among others?

A. No, they are not in there.

Q. In the station building?

A. They are in the station building but not in the figure of $160,000 that you are talking about.

Q. They are not?

A. No.

Q. You have $436,995 for mail handlers, have you not?

A. That is the figure appearing on line 8.

Q. How much mail is handled for the suburban passengers as compared with the through passengers?

A. That would involve knowledge of what is being handled for other railroads. I don't know that.

Q. Is any of the mail carried on suburban trains?

A. Yes.

Q. Well, how much? Do you know? Milwaukee trains I mean.

A. If you confine it to Milwaukee trains, I will say it is a [fol. 352] small amount.

Q. But, you have charged, in apportioning that expense you have taken 3½ times for the Milwaukee passengers on suburban trains as compared with the Milwaukee passengers on through trains, have you not?

A. Yes, the passenger count is 3½ to one.

Q. You made that division in your hypothetical case.

A. That's right.

Q. This column 4, starting on sheet 6, sheets 6 to 10, as a matter of fact, it includes all the expenses of operating the station whether they have anything to do with any service or whether they have anything to do with through service, or anything to do with suburban service. Is that not correct?

A. Column 4 represents the proportion of the expenses of the Union Station Company which are paid by the Milwaukee on a use basis.

Q. I say it includes expenses, all expenses of maintaining the Union Station, whether they apply to through service, suburban service, or no service at all.

A. It is a proportion of all expenses of the Union Station.

Q. Whether they apply to through service, or suburban service or not to either.

A. I think I answered it when I said it was all.

Q. Well, there is service, and there are expenses that have nothing to do with either through or suburban service, [fol. 353] are there not?

A. No.

Q. There are not?

A. No.

Q. Isn't there an office building there?

A. To that extent I will qualify it. I would like to correct my answer. The office building expenses are not included in column 4.

Q. Will you look at Exhibit 30 in the las- case?

Mr. Merrill: Excuse me, before you proceed with the question. For the purpose of identifying the exhibit, that Exhibit 30 was one that was withdrawn from the preceding case. I wonder if you want to designate it by its actual exhibit number.

Mr. Guthrie: I will if I get an opportunity. I was going to ask a question about it in just a minute.

By Mr. Guthrie:

Q. The first column of Exhibit 30, gives operating expenses corresponding to the second column of the character in your first column of your Exhibit 14. Is that not true?

A. Yes, I believe that is the same starting point.

Q. Now, they are divided there to other than direct train service, are they not?

A. That is what it shows.

Q. You take head house for example. That is 100 per cent other than direct train service, is it not?

A. Yes, sir, Account 2270.

[fol. 354] Q. Going to your Account 373, please, the general station and concourse in Exhibit 30, that I spoke to you about. That isn't divided up there. I will simply state, so as to shorten this up somewhat, that in the Exhibit 30 the expenses are divided on other than direct service, through service and suburban service. Now, about Exhibit 30, I mean the one you had identified as Exhibit 30 in the other case, that was offered in evidence by the Protestant's as Protestant's Exhibit Q, and is incorporated in our Exhibit 21 in this case. I think that is accurate.

There was the division there of the operating expenses in other than direct service, through service and suburban service, was there not?

A. Yes.

Q. Now, in your answer in your hypothetical question, on the number of passengers in a division of expense according to the number of passengers, you paid no attention as

to whether or not the particular facility whose expenses were divided, was used by through passengers or by suburban passengers, or what proportion was used by through passengers or suburban passengers, did you?

A. The calculation was made on the total payments made by the Milwaukee Railroad to the Union Station Company on a use basis.

Q. It had nothing to do with any of the particular items used by through passengers and suburban passengers.

A. The computation was made on the total.

[fol. 355] Q. The answer to my question is, it had nothing to do with what particular items were used by suburban passengers and through passengers, the particular facilities, the particular charges.

A. It was on the total.

Q. I do not think it is necessary to go through all the items. Mr. Stephenson, in paying Union Station expenses, of course, the Milwaukee's share is paid from the Milwaukee treasury, measured in various ways. Part of the expenses on a proportion on the basis of ownership and part on a use basis on cars.

A. Yes.

Q. That is applied by the Union Station Company to the through service facility, the suburban service facility, or non-service facilities as the expense arises without regard to the source. Is that not true?

A. Yes.

Q. Have you got this Rail-Commutation 10-43?

A. I have a copy.

Q. 10-43 means it came out in 1943, doesn't it?

A. I presume so.

Q. The publishers say in January, 1944, published in January, 1944.

A. Yes.

Q. I think you said yesterday that has never been passed on or approved by the Interstate Commerce Commission. It says on its face, or something like that. If I don't quote [fol. 356] it correctly, you can correct me.

A. Yes, it carries the statement that this formula has not been considered or adopted by the Interstate Commerce Commission.

Q. May I see it? (Handing to counsel) That is a long document. I never saw it before. It was not referred to in any of the exhibits that were furnished. I would like to have leave to look at it over the noon hour.

Mr. Merrill: No objection.

Mr. Guthrie: Now, I have Mr. Olson coming in at 2:00 I wonder if we could withdraw Mr. Stephenson to put Mr. Olson on?

Exam. Fuller: Yes, we will adjourn until 2:00 o'clock.

(Whereupon, at 12:30 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 357] AFTERNOON SESSION 2:00 p.m.

Exam. Fuller: Let us proceed.

Mr. Guthrie: Mr. Olson, will you please take the witness stand?

A. B. OLSON was sworn and testified as follows:

Direct examination.

By Mr. Guthrie:

Q. What is your name, please?

A. A. B. Olson.

Q. What is your occupation?

A. Secretary, auditor, real estate tax agent, Chicago Union Station Company.

Q. How long have you been there?

A. I have been employed by the Union Station since '30. I have been an auditor and secretary since '46, with them.

Q. You are here under subpoena?

A. Yes, sir.

Exam. Fuller: Do you have the return to the subpoena?

Mr. Guthrie: It may be in my office, but he admits he is here.

Exam. Fuller: I need to turn it in.

Mr. Guthrie: I did not know you needed a return as long as he was here.

By Mr. Guthrie:

Q. You are an engineer by profession, Mr. Olson?

A. Yes, sir.

[fol. 358] Q. At what university?

A. University of North Dakota and University of Minnesota.

Q. When did you get out of college?

A. 1920.

Q. You have been employed with various railroads since that time? Is that correct?

A. Union Pacific from 1920 to '27; Burlington from 1927 to '30, and Union Station ever since.

Q. By the way, you have a law degree too, haven't you?

A. Yes, sir.

Q. When did you get that?

A. 1931.

Q. So you are an engineer, a lawyer, and accountant.

A. Thank you.

Q. Mr. Olson, I want to show you copies of two exhibits, Exhibit 29 and 30 that you prepared in the 1952 rate case, Illinois Commerce Commission No. 40486. You did prepare those tabulations, did you not?

A. Yes, sir.

Q. Directing your attention first to Exhibit No. 29. What is that?

A. The apportionment of investment, interest and taxes to suburban service, the period, January 1, 1952 to June 30, 1952, inclusive.

Q. Now, I see you have the columns, Directly Allocated, Unallocable, and Total to suburban service. Will you tell us briefly what those captions signify?

[fol. 359] A. We took our investment and what we could directly allocate to train service we put in number one, through train and suburban. The unallocable column represents stuff we can't tie to train service. The total, then we took the proportion to suburban service, 25 per cent of the total.

Q. Down below you have Road and other Uses not Involved in Suburban Service. What kind of uses are those? As a matter of fact, they are not involved in any service, are they, or not involved with suburban service.

A. No.

Q. In other words, of your total investment of $83,051,934 in Union Station, proportion really applicable to suburban service, $5,221,893. Is that where that shows?

A. Yes.

Q. In other words, your relation of your suburban service to your total investment is 6.287503 per cent. Now, down below you have interest and property taxes, I think, on that first sheet of Exhibit 29.

Mr. Guthrie: Mr. Examiner, I am referring to the old Exhibit 29. It is part of our Protestant's Exhibit 21 in this case, but it is convenient to refer to it, I think, by the old exhibit number. And I mean, of course, when I say Exhibit 29 in this contention, I mean the Exhibit 29 in Illinois Commerce Commission Case 40486. I shan't say that every time.

Exam. Fuller: It was received as Q1.

[fol. 360] Mr. Guthrie: It was identified as Exhibit 29. That is the way Mr. Olson knows it, and we introduced it as Exhibit Q1.

Exam. Fuller: On this Exhibit 29, can he explain where this 25 per cent to suburban came from?

By Mr. Guthrie:

Q. Will you explain that, please, Mr. Olson?

A. Actually the proportion of the suburban service was 30 per cent, but to be fair, we just took, arbitrarily took the 25 per cent.

Exam. Fuller: Where did the 30 per cent come from?

The Witness: Well, it was allocations given to me by the Milwaukee Railroad. I took the original figures and worked them out according to percentages they allocated. What we thought might be fair.

Exam. Fuller: This 30 per cent wasn't your idea?

The Witness: No, sir.

Mr. Guthrie: The 30 per cent, Mr. Examiner, is the proportion—and I am sur this will not be disputed. The 30 per cent is the portion of suburban cars using the station to all cars using the station, approximately 30 per cent. Right now it is the same, 29 and a fraction per cent. That is the 30 per cent figure that Mr. Olson was referring to.

and I am sure that that would not be disputed. It is the fact and is shown in the next Exhibit 30. Exhibit 30 shows that.

Exam. Fuller: Let me ask you about Exhibit 29. This proportion to suburban means proportion to all suburban service.

[fol. 361] The Witness: Yes, sir.

Exam. Fuller: I see. Going into Union Station.

The Witness: Yes, sir.

By Mr. Guthrie:

Q. Then you applied to that the then percentage of the Milwaukee which is 44.82 per cent. That is, you applied to the suburban figure the percentage of 44.82, which is the Milwaukee percentage of suburban cars as given to you at that time. Is that not correct?

A. Well, the ink figures there are not mine.

Q. I say as given to you.

A. Yes, sir.

Exam. Fuller: Who put on those ink figures then?

Mr. Guthrie: Mr. Stephenson, I think. I don't know. I don't know whether Mr. Olson did or who put on the ink figures.

The Witness: It was put on over here at the hearing.

Mr. Guthrie: Mr. Stephenson testified at the last hearing he put them on. I will ask him.

Exam. Fuller: There is no dispute about that?

Mr. Guthrie: There is no dispute. 44.82 was the percent.

By Mr. Guthrie:

Q. And the per cent now is how much? Do you know?

A. I think it is 42.22.

Q. Yes, that is right. Have your proportions changed any, or has there been any substantial change in your proportions outside of 44.82 or 42.22 since this exhibit was prepared?

[fol. 362] Mr. Merrill: Objected to unless it is shown that this witness made a study to determine that fact.

Mr. Guthrie: I mean of the Union Station allocations of Union Station figures. Has there been any——

Mr. Merrill: Same objection.

Exam. Fuller: Overruled. He may answer.

A. The interest on the taxes are not too far off from the '52 figure. Payroll taxes, of course, would be different, but the total interest and the railway taxes have not gone up considerably.

Q. And the allocation between the various uses is substantially the same, is it not?

A. Yes.

Q. Well, take the next sheet, payroll taxes. You have $118,074. That is for half a year, is it not?

A. Yes, sir.

Q. Approximately $336,148 for the full year.

A. I am not quite sure. The payroll taxes have gone up.

Q. I say for the full year 1952, based——

A. Based on this it would be double this, that's right.

Q. Now, I will tell you what the payroll taxes are according to the exhibit in evidence in this case. For the year 1954, and I refer to Petitioner's Exhibit 14, sheet 5, shows the payroll taxes for the year 1954 to have been $238,270.42 for the Union Station Company.

A. That's right.

[fol. 363] Q. So they have gone up on a yearly basis about $2,000, according to that, isn't that correct?

A. Yes.

Q. How did you make your assignments on sheet 2 of Exhibit 29? That was referred to through the other case on sheet 2, Exhibit 29, between the overall payroll taxes and the assignments to the services below, through and suburban, suburban, and through.

A. I imagine what we did is we took the total payroll taxes and we assigned it to through and suburban and we assigned it to suburban and to through service on the actual payroll, and then multiplied it by the percentages. Six per cent over whatever the payroll taxes amounted to. That is based on payroll.

Q. Actually, the allocation would be substantially the same now as it was then.

A. Yes, sir.

Exam. Fuller: These payroll taxes, aren't they based on some kind of assignment portion?

The Witness: Based on actual payroll.

Mr. Guthrie: Well, there has to be an allocation, of course, between the through and suburban service. Some of the payroll use both.

The Witness: That's right, but I was going to say the method of allocation would be substantially the same now as it was then. That is the only point I was making here.

Mr. Merrill: May I ask one question?

[fol. 364] Exam. Fuller: I just noticed on this page 2 that apparently, it is a little more than 30 per cent.

Mr. Guthrie: It is 32½ per cent, about 32½ per cent I think was the allocation. That is because some of the items did not have payroll in on the other allocation, I think. It is very close to the 30 per cent.

Mr. Merrill: Could I ask a question for clarification?

Mr. Guthrie: Yes, as far as I am concerned.

Mr. Merrill: Thank you, sir. Mr. Olson, do you allocate any of these expenses in connection with the Chicago Union Station Company's accounting procedure?

The Witness: No, sir.

Mr. Merrill: I am a little puzzled as to what allocation Mr. Guthrie is speaking about when he says is the allocation substantially the same. I would like to make something in the nature of an objection here unless Mr. Guthrie will specify exactly what allocation he is referring to.

Mr. Guthrie: Mr. Olson has testified he made these allocations and prepared these exhibits, all except the part that was written in in pen and ink in the old case. He is the auditor of the Union Station Company. I do not know of any better source. This is Union Station Company expense he is allocating, not anything else.

Mr. Merrill: Mr. Examiner, the witness testified he made certain allocations in 1952 from figures furnished to him by [fol. 365] the Milwaukee Railroad. Now, for the life of me I cannot see what allocations at the present time are being talked about, because there haven't been any made in this case whatsoever.

Mr. Guthrie: We will show that the percentage of cars in this case is substantially the same as it was in the other, 29 and a fraction, 30 per cent. I am getting the basis of his allocations in the other case, and showing that there has

not been substantial variance. That is the only way we can proceed.

Exam. Fuller: Taking sheet 2 on the theory that is made up on, would the proportion assignable to suburban service be substantially the same today as it was then?

The Witness: Based on the same formula they used then, it would be about the same.

Mr. Merrill: In other words, if you use the same formula today you used then you would have the same form——

Exam. Fuller: It is the percentage. That is not fair. You cannot characterize a question that way at all.

Mr. Merrill: Then I apologize to the Examiner, sir. My understanding from his answer is they use the same, if they use the same percentage now they used then, the percentage would be the same, sir.

Exam. Fuller: Based on the same method your percentages would be substantially the same.

Mr. Guthrie: Based on the use the percentage would be substantially the same.

[fol. 366] Mr. Merrill: Let me just clarify our position in the form of an objection.

Exam. Fuller: Let us go ahead.

By Mr. Guthrie:

Q. Sheet 3 is the appropriation of concession revenue, is it not?

A. Yes.

Q. To the suburban service. Now, of these items that are in there Mr. Olson, in this Exhibit 29, the interest and the property tax would go on just the same whether there was any Milwaukee suburban service or whether there was not any, would it not? The interest on the bonds and property taxes. That is not true of the payroll taxes, of course, but I am talking about the interest on the bonds.

A. Interest on the bonds. I am not so sure about the taxes because after all that is based more or less on our investment and owned equipment, also on our value of our stocks and bonds. The tax form as set up over here by the Department of Revenue.

Q. But that would have nothing to do with the suburban service.

A. I don't know. I can't answer that.

Exam. Fuller: On this page 3, apparently it is assignable to suburban service, ten per cent. What is the basis of that?

The Witness: That is purely an estimate.

By Mr. Guthrie:

Q. Whose estimate was that?

A. It is not mine. I imagine the Milwaukee furnished it to me.

Q. Well, as far as, certainly your railway and real estate taxes are concerned, they would be the same no matter [fol. 367] whether there was suburban service or wasn't any.

A. Well, I won't answer that yes or no. Interest I'd go along and say yes, but not on taxes. Our accounting taxes here. There may be a difference there because of no suburban service in there.

Q. That is not the property of the Union Station, is it?

A. The what?

Q. I say the suburban cars are not the property of the Union Station.

A. No, but the suburban helps bring revenue into the station which all goes into making this so-called formula the Department of Revenue uses in arriving at a tax assessment for us.

Q. I was, of course, talking about property taxes.

A. That is what I *ma* talking about.

Q. Real estate property taxes. Now, of course, your payroll taxes would vary as would the payroll.

A. Right.

Q. Let me direct your attention to Exhibit No. 30. Mr. Olson, before we go to Exhibit No. 30, I want to call your attention to this colloquy in the prior case between the Examiner, Mr. McElroy and you. That is in the case in 1952 in which he was asking you about the claimed out of pocket charge against the Milwaukee Road, $72,495 which included both the items in Exhibit 29 and Exhibit 30.

These questions were asked and these answers were given. This was on October 28, 1952.

[fol. 368] "Exam. McElroy: It shows there $72,495"—referring, if the Examiner please, to the original Exhibit 25—"charged the St. Paul for use of Chicago Union Station Company. My question is, if suburban service is discontinued by the St. Paul Railroad, would this item of $72,495 be saved the Milwaukee Road?

"The Witness:" That is you, Mr. Olson. "Not all of it because the $72,000 includes some interest on bonds and the taxes we have to pay anyway."

Do you remember that question being asked and did you make that answer?

A. Yes, sir.

Q. Now, passing on to the other exhibit, please, will you look at Exhibit 30, and in that connection I will have this marked Protestant's Exhibit 24.

Exam. Fuller: It will be marked Protestant's Exhibit 24, for identification.

(Protestant's Exhibit 24, submitted by Mr. Guthrie, was marked for identification.)

By Mr. Guthrie:

Q. In that connection, I want you to look at Petitioner's Exhibit 14 in this case. I show you Petitioner's Exhibit 14, starting on page 2, and you will note that the figures on Petitioner's Exhibit 14 are taken from your annual report for 1954, adjusting for flood damage. Just look at the first column there.

A. Yes, I checked that. It is right.

[fol. 369] Q. And flood damage is taken off. These are, of course, exclusive of payroll taxes, aren't they, or are they? Those figures there, starting on page 2.

A. Yes, exclusive.

Q. I will show you the document that is marked Protestant's Exhibit 24. You have examined that exhibit, have you not, Mr. Olson?

A. Yes, sir.

Q. And the notes attached to it. Is that apportionment made in the same manner as the apportionment in your Exhibit 30, the same method, let me put it that way, in the case before the Illinois Commerce Commission, No. 40486?

A. Down to a certain point.

Q. Down to what point?

A. Union Station expense for suburban service attributable to the Milwaukee on the basis of 42.22 is $242,441, and out of pocket, $73,751.

Q. Now, the others are our suggested adjustments, as I told you.

A. I don't know what they are. That is, down to that point, that is on page 3, under the item "Amount of Union Station Expense for Suburban Service attributable to C. M. St P & P on basis used by A. B. Olson, 42.22 per cent."

Q. That item, that is the one you said, I think.

A. That's right. But, I would like to suggest that this heading of this thing, "And Computation of C. M. St [fol. 370] P & P's Share thereof", that I can't go along with because this is the Union Station's exhibit of their out of pocket cost and has nothing to do with the Milwaukee's out of pocket cost.

Q. Except the 42.22 per cent. This is both fully distributed and out of pocket basis that is in this exhibit.

A. That is the Union Station's out of pocket.

Q. That is what it purports to be.

A. Yes.

Q. This allocation is made of the total operating expenses through service, suburban service and what you might call non-service use. Isn't that true?

A. Your Exhibit 24?

Q. Yes.

A. Other than direct train service, through service, suburban service and out of pocket cost.

Exam. Fuller: Is this Exhibit 24 going to be sponsored by Mr. Hammond?

Mr. Guthrie: I believe we can sponsor it ourselves. It is a mere matter of computation. The figures in the first column are the same as those in Exhibit 14. The alloca-

tion is made on the basis explained, which is the same basis that Mr. Olson adopted in the other case, as he has just said. I think there is one typographical error on here I would like to have physically corrected. One of the account numbers is wrong.

The Witness: Page 2, down at the bottom you have Ac- [fol. 371] count 440, Stationery and printing, that should be 410.

Mr. Guthrie: Will you change that, please?

The Witness: On the first sheet too, it says Computation of S. M. St P & P. I think you mean C.

Mr. Guthrie: Oh, yes, please change that.

May I be excused for just one minute?

Exam. Fuller: Yes, off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Guthrie: I think that is all of Mr. Olson. I want to say this. I want to add at the bottom of this thing, Exclusive of Payroll Taxes, but I guess that is clearly brought out. This is just operating expenses exclusive of payroll taxes. If you think it would add to the clarity, I think we can put that on there.

Exam. Fuller: You have no payroll taxes on there.

Mr. Guthrie: No, we were going to add another exhibit with them, but this is just the operating expenses, the allocation.

Exam. Fuller: You are going to do that before you get through.

Mr. Guthrie: Oh, yes, I thought it might help clarify if I added that on the bottom.

Exam. Fuller: As I understand, Mr. Olson, are you responsible for this division between——.

Mr. Guthrie: Incidentally, that is a good suggestion. I am going to offer my exhibits right now before cross ex- [fol. 372] amination of Mr. Olson.

Mr. Merrill: We ask ruling be reserved.

Exam. Fuller: All right.

Mr. Guthrie: When I say offer them, I had better say I am offering Protestant's Exhibits 21, 22, 23 and 24.

Exam. Fuller: I take it on the old Exhibit 30, it will be the same as new Exhibit 24. Are you responsible for this apportionment between direct train service and other than direct train service?

The Witness: No, sir.

Exam. Fuller: Who is responsible for that?

The Witness: All I furnished was the basic facts, and the Milwaukee Railroad made the distribution between through and suburban based on, I think the old Olliphant formula they used in '42, and I wasn't in the case then at all. We followed the '42 case in '52. They furnished me what they did in '42, and said that is the way to allocate it in '52.

Exam. Fuller: And you got 50 per cent and 90 per cent so far.

The Witness: We did go this far. In that ten year period in somewhere, we had to talk to the department heads. We asked them if these apportionments they had back in '42 were about the same now, and they were, between '42 and '52.

Exam. Fuller: I don't know that I understand it yet. I thought you said you were responsible for this exhibit insofar as it showed the Union Station's out of pocket [fol. 373] basis for suburban service: That is not so?

The Witness: No, I furnished the basic facts and the Milwaukee on the basis of the Olliphant formula, gave me the allocations, and the proportions to us, which we checked up with the department heads where it was necessary to see if there had been any change between '42 and '52.

Exam. Fuller: Were there some changes?

The Witness: Not to my knowledge.

Exam. Fuller: Does the Olliphant formula have a method of apportioning between direct train service and other than direct train service?

The Witness: Yes, *sir*, it must have. That is where I got it.

Exam. Fuiler: Of course, I can understand where the others come from. They are based on ticket sales, 90 and

10 per cent, or number of trains or number of cars. But, I do not understand where this other than direct train service comes from.

The Witness: Well, I can give you one instance. We have the second floor to the 8th floor of the head house portion which is rented to the Burlington, Milwaukee and the Pennsylvania, and the Western Association, which has nothing to do with train service, and that is expenses assignable to that. We have revenue that we receive from that. That has nothing to do with train service. It is strictly an office building.

Exam. Fuller: Can you give me any other illustrations?

The Witness: Well, we have a power plant that some [fol. 374] of the steam is sold to others. We furnish the Pennsylvania Freight House with steam. We furnish the post office with steam. We furnish the Burlington Freight House with steam.

Exam. Fuller: I guess Fred Harvey refrigeration would be an illustration too, would it not?

The Witness: Yes.

Exam. Fuller: I think I get the idea back of it.

Mr. Guthrie: I want to correct myself as to the exhibits I offered. In addition to 21, 22, 23 and 24, I omitted 20, Exhibit 20. I want to offer those all in evidence.

Cross examination.

By Mr. Merrill:

Q. Mr. Olson, what railroad uses the tracks north of the concourse in Union Station?

A. Almost exclusively Chicago, Milwaukee, St. Paul & Pacific.

Q. How many tracks do they use north of the station?

A. Well, we have one to 21, so there is 1, 3, 5, 7, 9, 11, 13, 15, 17, 19—11 tracks.

Q. What is the investment of the Chicago Union Station Company in tracks and facilities north of the concourse?

A. Approximately 20 million dollars.

Q. The questions I want to ask you about this Exhibit No. 29 from the 52 case are not intended to relate to any

thing asked you by the Examiner, but reflect a desire on my part to clarify what I cannot now understand. You stated there in response to Mr. Guthrie's question, that the [fol. 375] allocation today would be substantially the same, referring to the figures shown on sheet 1 and sheet 2. I wonder if you would explain exactly what allocation today would be the same as it was then. Just tell us what you had in mind when you made that statement.

A. Well, I lost that.

Q. Well, did you not state in response to a question from Mr. Guthrie, that the allocations made on sheet 1 and sheet 2 of Exhibit 29 from the 1952 case would be the same today as they were at the time those allocations were made.

A. Yes, I did.

Q. Now, will you explain exactly what you meant by that statement? Will you explain whether you are referring to hypothetical allocations or to an actual allocation which the Union Station Company makes in the course of its business.

A. We don't use this allocation any place except for this particular instant and this was purely an estimate of what we felt would be a fair allocation to suburban service. It is not based on anything that is in our exhibit, except the total figure of $83,051,934, which was the total investment in 1952.

Exam. Fuller: You mean by that it would be a fair allocation based on the relative use of the two services?

The Witness: It was an estimate but I say the only factual figure here is the total investment figure. The allocation where we assign 25 per cent to suburban service and to so-called unallocated, was based on an estimate.

[fol. 376] Exam. Fuller: Of the relative use?

The Witness: Yes.

Exam. Fuller: And on page 1 of Exhibit 29, you used 25 per cent instead of 30 per cent in order to be conservative.

The Witness: Yes, sir.

Exam. Fuller: And your testimony was that, well, you understood the relative use is the same today as it was in 1952.

The Witness: Yes, sir.

By Mr. Merrill:

Q. Now, you stated, as I recall, that the tracks and property north of the Union Station is valued at something in excess of 19 million dollars.

A. Yes, sir.

Q. Now, with respect to the use made of that property by the Milwaukee Road suburban service and by its through operation, what factor would you apply to that valuation to arrive at a fair amount allocable to suburban service, having in mind the relative use of the through service and the suburban service.

A. Very conservative would be 50-50.

Q. Then the value assignable to suburban service with respect to that property would be something in excess of $9,500,000, would it not?

A. Yes.

Q. Now, if you will refer to Exhibit No. 29 from the 1952 case, which you show a proportion assigned to suburban service of the total investment to be only $5,221,893, would it appear that that portion assigned to the suburban [fol. 377] phase of the Chicago Union Station operation is therefore somewhat understated.

A. Yes, sir.

Q. Now, if I may refer to Intervenor's Exhibit 24 in the present proceeding. I believe you made it clear in your testimony, Mr. Olson, that insofar as this exhibit purported to show an amount of out of pocket cost of the Milwaukee Railroad's suburban operation, you did not vouch for any of those figures. Is that right?

A. I thought I said that this was strictly the out of pocket Union Station cost and not the Milwaukee cost.

Q. And to the extent the exhibit shows a computation of the C. M. St P & P's share thereof, you do not want any part of it. Is that correct?

Mr. Guthrie: I object to the form of the question.

By Mr. Merrill:

Q. I am sorry. You do not purport to vouch for the correctness of the exhibit insofar as it attempts to show any computation of the Milwaukee's share of the out of pocket cost. Is that right?

A. Yes, sir.

Q. Let us refer to the same exhibit under the heading, Out of Pocket Costs, where, for example, you show various figures such as 25 per cent of total, 25 per cent of 30 per cent of the total, and various other breakdowns under the out of pocket cost suburban service.

A. May I beg your pardon. You say I show. This is not my exhibit. This is Protestant's exhibit.

[fol. 378] Q. All right, I will carry on from there, sir. We can clarify that. This exhibit was prepared and presented to you by the intervenors in this proceeding.

Mr. Guthrie: Protestants we call ourselves.

Mr. Merrill: You call yourselves wrong, Mr. Guthrie, because you are not a protestant.

Mr. Guthrie: Yes, we are. We call it Protestant's exhibit.

Mr. Merrill: This is a 13 section investigation, is it not?

Exam. Fuller: Let's not quibble. They are protestants.

Mr. Merrill: Well, then maybe Mr. Guthrie was quibbling, but I will call them protestants if he insists.

By Mr. Merrill:

Q. I will start the question again. Was this exhibit handed to you by the protestants in this proceeding?

A. Yes, sir.

Q. It was not prepared by you or under your direct supervision. Is that correct?

A. Yes, sir.

Q. What is the concept of the out of pocket cost of the Chicago Union Station which is reflected in that last column of the exhibit? Do you know what that refers to exactly? How it is arrived at?

A. We took our suburban cost and said if we eliminated certain trains—or it was if we had the stuff there, that

is money we would have to pay whether we had the suburban service or not. We would have to have certain train-
[fol. 379] men, certain train directors, certain signal men, and mechanics and stuff to operate, and it was out of pocket cost.

Q. And that reflected the suburban service of four different railroads, did it not?

A. Yes, sir.

Q. Was there any attempt to break that down, any attempt made to break that down as to what the elimination of the Milwaukee Road's suburban service would mean as to the expense charged to the Milwaukee Railroad?

Mr. Guthrie: I will object. The 44 per cent was put on by the Milwaukee Road with pen and ink by Mr. Stephenson under direct as he testified in the other case, and this witness was testifying to the allocation of the Union Station Company's cost among through service, suburban service and so forth. He did not make the allocation of the Milwaukee Road as he said three or four different times.

Exam. Fuller: I believe that question should be directed to your own witness.

Mr. Guthrie: Yes.

Exam. Fuller: What the Milwaukee did—

Mr. Merrill: I thought I was cross examining this witness on an exhibit which Mr. Guthrie is trying to offer through Mr. Olson. I am merely asking him if he made any additional computations besides what is shown on this exhibit, sir.

Exam. Fuller: That is all right.

Mr. Merrill: I thought it was in good faith.

[fol. 380] Exam. Fuller: Don't ask him what the Milwaukee did.

Mr. Merrill: No, sir, I did not. I asked him whether he did.

Exam. Fuller: All right, go ahead.

By Mr. Merrill:

Q. Did you make any additional computations to determine what the difference in out of pocket cost to the

Chicago Union Station would be should the Milwaukee Road discontinue its suburban operations?

A. No, sir.

Q. Have you seen the Petitioner's Exhibit 14 in this proceeding, Mr. Olson?

A. Yes, sir.

Q. Referring to sheet 9, column 11, based upon your examination of the exhibit, does that represent out of pocket cost to the Milwaukee Railroad of operating cars in and out of the Chicago Union Station?

Mr. Guthrie: The witness has stated he does not know what the out of pocket cost to the Milwaukee Railroad is, and I object to the question.

Exam. Fuller: Read that question.

(Question read.)

Exam. Fuller: Just a moment. The objection is sustained.

Mr. Merrill: Is that on the basis that Mr. Guthrie proposed or is that on another basis, sir? Just for my ow information so I know whether to reframe the question or not.

Exam. Fuller: You are asking him to evaluate an exhibit [fol. 381] of Mr. Stephenson.

Mr. Merrill: All right, sir, I will drop the question. That is all I have, sir. Thank you.

Mr. Guthrie: I think that is all.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. You are excused.

(Witness excused.)

Mr. Guthrie: I want to qualify my offer to this extent. In offering Exhibit 21, which is an accumulation of exhibits from Illinois Commerce Commission Case No. 40486, so-called 1952 case, I would like to limit my offer in this manner.

These exhibits consist both of those suggested in some instances by the petitioner and some instances suggested by us. They are offered to show what was presented to the

Illinois Commerce Commission in that case and what the claims of the parties were in that case as shown by those exhibits, not necessarily as indicating we acquiesced in all the facts and figures, purported facts and figures set forth in that exhibit. We believe it should be however, before the Interstate Commerce Commission in this case and freely referred to by all parties in the case. That is the purpose of the offer. The other exhibits I offer as I stated.

Exam. Fuller: Let me see if I understand you. Exhibit 21, you do not put any limitation on the basic figures.

[fol. 382] Mr. Guthrie: Not arithmatic. We are putting them in evidence mainly to avoid a vast amount of repetition in this case, and also to show the theories of the parties, and so they may be freely referred to by the Commission and all the parties in this case in the course of the case, which I think is a legitimate purpose. And, of course, Mr. Fisher calls my attention to the fact to some extent that applies also to the annual report and to the statistical statements. However, I do not believe I care to—they are produced to show what the Milwaukee Railroad produced and so far as I know, that is what they filed in the annual report, and those are the statistics they gave us.

Exam. Fuller: I understand counsel are not raising any question but what Exhibits 20, 21, 22 and 23 are accurate reproductions of what they show. Is that correct, Mr. Merrill?

Mr. Merrill: That is correct.

Exam. Fuller: Illinois Commission?

Mr. Gibbons: Yes, sir.

Exam. Fuller: And let the record also show that Exhibit 20 is offered for the purpose of showing the findings that the Illinois Commerce Commission made in 40486, and not for proof of the facts therein stated.

Mr. Guthrie: I want to say this in answer to that question, Mr. Examiner. Insofar as their findings against the present litigants, present petitioner, I submit to the Commission's question as to what their legal effect is, their [fol. 383] binding effect. I do not say they don't have a binding effect.

Exam. Fuller: Now, have you any other objections?

Mr. Merrill: I think that Mr. Guthrie will agree with me on this point, that those exhibits shown under Exhibit 21, show the facts as they existed in 1952 and not necessarily are proper and correct amounts for the operations during 1954 or at the present time.

Mr. Guthrie: Yes, unless the evidence shows that they are substantially the same, yes, of course. Except insofar as the evidence shows to the contrary.

Mr. Merrill: Now, we have no objection to Exhibit 20, providing that it is not to be treated as evidence of the facts which are included in the findings or in the general discussion by the Commission, but merely for the purpose the Examiner stated. We have no objections then to Exhibit 21, 22, which is the report to the Illinois Commerce Commission, or 23, and I understand that is as far as the tender of exhibits now goes.

Mr. Guthrie: Well, in a few minutes I am going to offer Exhibit 24, but I might give some evidence as to how it was made up from the other exhibits.

Exam. Fuller: All right, we will wait on 24, then. Exhibits 20 to 23 inclusive, will be received.

(Protestant's Exhibits 20 to 23, inclusive, submitted by Mr. Guthrie, were received in evidence.)

[fol. 384] Exam. Fuller: We will take a short recess.

(Short recess.)

Exam. Fuller: Let us proceed. Mr. Stephenson, please resume the stand.

R. S. Stephenson resumed the stand and testified further as follows:

Recross examination (continued).

By Mr. Guthrie:

Q. Mr. Stephenson, I refer again to the transcript of your testimony in Case No. 40486, with respect to the exhibits then identified as Petitioner's Exhibits 29 and 30, which

were after introduced into evidence as Protestant's Exhibits Q1 and Q2 respectively.

Mr. Merrill: What is the page?

Mr. Guthrie: 658.

Mr. Merrill: Thank you.

By Mr. Guthrie:

Q. Question by Mr McGuire. "Q. Let me go back just a moment here. The percentage which is shown on the first sheet of Exhibit 29"—maybe you better have these in front of you. Just a moment and we will get them.

"The percentage which is shown on the first sheet of Exhibit 29, 6.287503 per cent, that is just below the middle of the page. That is the percentage of the total investment which using the Olliphant formula which you have referred to before, would be our"—referring to the Milwaukee Road—"our share of the interest on bonds and taxes on this theoretical station facility capable of handling suburban traffic.

[fol. 385] "A. Not quite, Mr. McGuire. The 6.287503 per cent is the proportion of investment, of the total investment which is assigned to suburban service.

"Q. Oh, I see.

"A. Out of that proportion, or out of that amount the Milwaukee's portion is 44.82 per cent."

Were those questions asked and did you make those answers?

A. They were and I did.

Q. Both on Exhibit 29 and 30, added in ink appears the 44.82 per cent, and the computation made from it. Is that in your handwriting?

A. It is not in my handwriting, but it was inserted by someone in our statistical section, I think.

Q. I believe you testified to that, without looking all through this thing.

Mr. Guthrie: I think that is all of Mr. Stephenson, for the time being anyway. There are so many figures here I won't promise.

Mr. Merrill: No further questions.

Exam. Fuller: You are excused.

(Witness excused.)

Mr. Guthrie: Mr. Examiner, I am going to put Mr. Fisher on the stand merely to testify to some computations and tabulations that he made, which I think is proper. Will you take the stand, please, Mr. Fisher?

[fol. 386] Francis D. Fisher was sworn and testified as follows:

Direct examination.

By Mr. Guthrie:

Q. State your name.

A. My name is Francis D. Fisher.

Q. You are a lawyer associated with the firm of Tenney, Sherman, Bentley & Guthrie, attorneys for the protestants in this case, whose offices are at 120 South LaSalle Street, Chicago, Illinois?

A. Yes, I am.

Q. I will hand you Protestant's Exhibit 25.

(Protestant's Exhibit No. 25, Witness Fisher, was marked for identification.)

Offers in Evidence

Mr. Guthrie: I think I might as well offer it right in evidence. This is taken from the current time tables of the Burlington and Rock Island showing the stations, miles from Chicago and rates of fare.

Exam. Fuller: Is that correct, Mr. Witness?

The Witness: Yes, it is.

Mr. Guthrie: I was going to try to avoid asking him.

The Witness: The time tables were given to me, to our office, in request for the current suburban time tables.

Mr. Guthrie: They are effective daylight savings time, this year, April 24, 1955. I will offer those in evidence now.

The Witness: I should say this is a portion of the time table.

Mr. Guthrie: It is taken from the time table. I explained [fol. 387] that.

Exam. Fuller: Do you know of your own knowledge that their suburban service is completely dieselized?

The Witness: No.

Exam. Fuller: Is that shown in their time table?

The Witness: No.

Mr. Guthrie: As a matter of fact, I think it will be admitted by the other side. If it isn't I will bring a witness that will so testify. I will bring one of the employees of the Commission from Springfield. I have to go to Springfield to get him. But, I believe, probably I would like to ask now if it will be admitted by Mr. Merrill, that the suburban services of the Rock Island and Burlington are dieselized?

Mr. Merrill: Frankly, sir, I do not know.

Exam. Fuller: Can you check into that and see whether you can admit it?

Mr. Guthrie: I ride the Burlington myself, but I am not testifying. It is a fact, I think, but——

Exam. Fuller: They can readily check that.

Mr. Guthrie: It is 100 per cent dieselized. The Northwestern is,— You might check this or I can get evidence of it,—is mostly steam locomotives.

Exam. Fuller: I would like to have that information on the Northwestern to what extent they are.

Mr. Guthrie: I am planning to get it. I thought I could [fol. 388] get it today here at the Commission, but I can't. I will have to get it. Mr. Fisher, of course, does not know of his own knowledge.

Exam. Fuller: I understand the Northwestern also is getting some modern cars, some of the gallery cars. I wonder if you could check on that too.

Mr. Guthrie: They are. The best of my information, Mr. Examiner, is that at the time the Northwestern fares were established they were almost entirely operating under steam locomotives. I think they have some diesel now, very little.

Exam. Fuller: Could you have your operating man check into that?

Mr. Merrill: As to whether the Burlington and Rock Island are 100 per cent dieselized in their suburban operation?

Exam. Fuller: And also the extent to which the Northwestern is dieselized or has modern cars. I think the facts will be well known among railroad circles.

Mr. Merrill: I will try to find out.

Mr. Guthrie: I will telephone Mr. Merrill tomorrow or the next day to see if he has that information. If he hasn't I will get it somewhere else.

Exam. Fuller: Is there any objection to Exhibit 25?

Mr. Merrill: No, sir.

Exam. Fuller: It is received.

(Protestant's Exhibit No. 25, Witness Fisher, was received in evidence.)

[fol. 389] Mr. Guthrie: I will ask that this be marked Exhibit 26.

Exam. Fuller: It may be so marked.

(Protestant's Exhibit 26, Witness Fisher, was marked for identification.)

By Mr. Guthrie:

Q. Mr. Fisher, I will show you the document, the tabulation that has been identified Protestant's Exhibit 26. Did you prepare that?

A. I did.

Q. Will you tell us how?

A. The present and proposed one way fare of the Milwaukee is taken from Exhibit 17 and 19 in the present case. That is true also for the present and proposed fares from the other stations on the Milwaukee shown on this exhibit. The fares, or rates of fare for the Burlington and Rock Island are taken from information on Exhibit 25. I took Bensenville on the Milwaukee at random as a station less than 21 miles from the Chicago terminal and then found myself the two station stops on the Burlington and Rock Island close to that distance, slightly less in the case of the middle distance, so if there was any effect of a reduction in the fare per mile it would show to the advantage of the Milwaukee.

Exam. Fuller: What is the significance of the 21 miles?

The Witness: The testimony in this case has been that the Milwaukee, the fares per mile are changed after 21 miles out. There is a fall, a reduction in the fares per [fol. 390] mile. I don't have the transcript reference, but the Milwaukee fare expert so testified. The figures here are computed cents per mile from the distances and fares shown on the exhibits and time tables to which I have referred.

The proposed Milwaukee fares are shown in between the two red lines.

Mr. Guthrie: I will offer Exhibit 26, in evidence.

Exam. Fuller: Any objection?

Mr. Merrill: No.

Exam. Fuller: It will be received.

(Protestant's Exhibit No. 26, Witness Fisher, was received in evidence.)

By Mr. Guthrie:

Q. I will show you the document identified as Protestant's Exhibit 24, a tabulation consisting of three sheets with a sheet of notes attached. Did you prepare that, Mr. Fisher?

A. Yes, I did.

Q. Will you tell us how?

A. I did the arithmatic. I think the sources of the first column, page 1, total operating expenses, has been stated as Petitioner's Exhibit 14, sheet 2, column 4.

Q. Well, to make a long story short, that is just down as far as the total Union Station expense on page 3 of the exhibit. That column is simply a copy of the part of Petitioner's Exhibit 14, you referred to, is it not?

[fol. 391] A. That is correct. The percentages in the columns marked Per Cent, are those that appear in Exhibit 30 of the previous case.

Q. That is the exhibit that was introduced as Protestant's Exhibit Q, and by the previous case you mean Illinois Commerce Commission 40486, and is incorporated in Protestant's Exhibit 21 in this case.

A. That is correct.

Q. In Mr. Olson's testimony, reference was made under

the heading Suburban Service, to the figure 25 per cent of total. That is (a), and (b) 25 per cent of 30 per cent, (c) 25 per cent of 20 per cent, and so forth. Where were those taken from?

A. Those appeared in the foot notes to Exhibit 30, of Exhibit 21 in this case.

Exam. Fuller: That is on sheet 4.

The Witness: It is on the fourth sheet of that exhibit.

By Mr. Guthrie:

Q. In other words, instead of referring wholly to the foot note you wrote the percentage in so it would be easy to follow.

A. That was my thought.

Q. But there is no change made in those percentages.

A. No, I should state that in, I think two cases, there was no way of—the foot note on Exhibit 30 referred to an estimate of superintendence or something of that sort, which has not been done anew. In that case I figured the percentage which the divisions into through service and [fol. 392] suburban service, and other than direct train service bore to the total expenses and inserted those percentages in this exhibit with a note to that effect.

For instance, I think on signals and interlockers seems to stick in my mind. Yes, in signals and interlockers, Account 249 you will see in the last column, the out of pocket cost column, there is 1.04 per cent of the total. That percentage I computed from the Exhibit 30 in the old case, as stated in the note. That is true of some other accounts as noted.

Exam. Fuller: That account marked reference note (f) was done that way, was it?

The Witness: Yes.

Exam. Fuller: Several columns marked (f).

The Witness: Yes, that is correct.

Mr. Guthrie: I will offer in evidence Protestant's Exhibit No. 24.

Exam. Fuller: You have some more on there he has to explain.

Mr. Guthrie: Oh, the deductions.

By Mr. Guthrie:

Q. How about the deductions? What percentage did you use to obtain the Milwaukee's share of the out of pocket cost and fully distributed cost of the suburban service?

A. I used the ~~percentage 42.22 per cent which was~~ supplied to me by the Milwaukee Railroad as being the per cent that their suburban cars bore to the entire suburban cars.

Q. The data in Exhibit K, were those given you by Mr. Stephenson from the witness stand yesterday? In note K, I should say. Is that not so?

[fol. 393] A. I don't remember his testimony yesterday, but I remember very distinctly their supplying me with the per cent of 42.22 per cent.

Q. But, I mean it is in K there.

A. That is correct.

Q. There are certain deductions made on page 3. Will you explain those, please?

A. On page 3 there are listed certain items deducted. These items are Depreciation Accounts 266 and 305, Mail and baggage Accounts 373 E and F, 376 E and G and 410 B.

Q. Those are listed above, are they not?

A. They appear in the total operating expenses in the method of division of that expense used in Exhibit 30. I do not mean they were deducted in Exhibit 30. I mean they were not deducted in Exhibit 30.

Q. These expenses do not include payroll taxes, do they? Payroll taxes allocable to suburban service.

A. I heard Mr. Olson state they do not. I am sure they do not.

Exam. Fuller: Do you know how much you would have to add?

Mr. Guthrie: We are going to compute that and we are going to bring that in. It would have to be added.

Off the record a minute.

Exam. Fuller: Off the record.

(Discusion off the record.)

[fol. 394] Exam. Fuller: On the record.

Mr. Guthrie: I will offer, if the Examiner please, Exhibit 24, and I will state for the record that it is our intention to supplement it with an exhibit showing the allocation of payroll taxes which would be added to the net expense as claimed by us as shown in Exhibit 24. Exhibit 24 sets forth our contentions as to Union Station distribution with the exception of payroll taxes, which as I say, I will add with a supplement to this exhibit.

Mr. Merrill: May we have the ruling reserved until the other exhibits are offered?

Exam. Fuller: All right.

Mr. Guthrie: Off the record.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Guthrie: I will ask that these be marked Protestant's Exhibit 27, which is the population on the North Line, and Exhibit 28, which is the population on the West Line of the Milwaukee Road.

Exam. Fuller: They will be marked Protestant's Exhibits 27 and 28 for identification.

(Protestant's Exhibit 27 and 28, Witness Fisher, were marked for identification.)

By Mr. Guthrie:

Q. I show you Exhibits 27 and 28. Did you make up [fol. 395] that tabulation Mr. Fisher?

A. It was made up under my direction.

Q. What was the source? The source is stated on there, I guess.

A. The source is as stated, the United States Census. This is misleading here. Take Techny for instance on the North Line, the fifth town down. That asterisk should continue into 1950 as both of those figures were taken from the Rand-McNally Commercial Atlas and Marketing Guide.

Q. It says 1947 edition for 1940 figures, and 1952 edition for 1950 figures. Isn't that correct?

A. That is correct.

Q. I think it is quite plain there. That is also true of Long Lake and Round Lake, Roundout, is it not, Zenda?

A. Yes, and some more.

Q. The ones indicated.

A. That is correct.

Exam. Fuller: Roundout increased a little in population.

Mr. Guthrie: I think it is pretty clear. I will offer it in evidence, both 27 and 28.

Exam. Fuller: Any objection?

Mr. Merrill: I have just one or two questions. What is the source of the census figures for years after 1950 as shown in the third column, population according to latest census?

The Witness: The Census Bureau publishes supplemental census whenever it is made,— I believe it is made in Illinois—in order to obtain a greater increased portion [fol. 396] of motor fuel refunds as an incentive to have later information.

Exam. Fuller: Is that Federal?

The Witness: The Federal Census Bureau makes that census.

Mr. Merrill: What public information bureau were they taken from?

The Witness: It is a supplemental bulletin that they put out. It is available at their library, maintained by the Census Bureau in the City of Chicago.

Mr. Merrill: That is all.

Mr. Guthrie: I will offer them.

Exam. Fuller: They will be received.

(Protestant's Exhibits 27 and 28, Witness Fisher, were received in evidence.)

Mr. Guthrie: I will ask that this be marked as Protestant's Exhibit 29.

Exam. Fuller: It will be marked Protestant's Exhibit 29, for identification.

(Protestant's Exhibit No. 29, Witness Fisher, was marked for identification.)

By Mr. Guthrie:

Q. Mr. Fisher, I hand you Protestant's Exhibit 29. Did you prepare the figures on this exhibit?

A. Yes.

Q. Will you tell us how you did that?

A. Under Roman numeral I is a division of total passengers into revenue and non-revenue passengers, and a further division of the non-revenue passengers between those employed in the suburban service and those employed [fol. 397] in the through or freight service.

Q. Where did you get that apportionment?

A. The total number of revenue passengers is from the statistics for the year 1954, Petitioner's Exhibit 11 in this case. The number of non-revenue passengers, total number, is from the Exhibit 24 in the old case, which is part of Exhibit 21 in this case, which was supplied by the Milwaukee in that earlier case, I think at the request of the Commission.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

The Witness: The percentages used to divide the total number of non-revenue passengers between those employed in the suburban service and those employed in the non-suburban service were taken from the Illinois Commerce Commission Exhibit 43, also a part of Exhibit 21 in this case, and the resulting numbers are those computations.

Under Roman numeral II, the computation of cash value of transportation is derived first in this way. The total passenger revenues are taken from Petitioner's Exhibit 12 in this case and divided according to the percentages which appear under Roman numeral I, dividing total passengers up into non-revenue revenue and between non-revenue those who work in suburban service and those who work in non-suburban service.

Under Roman numeral III, the total operating expenses [fol. 398] are taken from Petitioner's Exhibits 12 and 13 and are divided up on the basis, well, head end expense is removed first, using a 3.2 per cent which was testified

to this morning by Mr. Stephenson. The passenger service expense is then divided between those who work in suburban service and those who work in non-suburban service on the basis of the percentages already referred to. These expenses include only the railway, operating railway expenses and do not include Union Station expense. If Union Station expense were included the expense value of hauling non-suburban employees would be larger.

Exam. Fuller: Did you explain the out of pocket basis?

The Witness: I thought I did. The last column says corrected.

Mr. Guthrie: I am just going to put the exhibit in for that. Mark this Protestant's Exhibit 30.

(Protestant's Exhibit No. 30, Witness Fisher, was marked for identification.)

By Mr. Guthrie:

Q. Referring Mr. Fisher, to Protestant's Exhibit 29, in the last column under Division 3, On Basis as Corrected, I hand you a document identified as Protestant's Exhibit No. 30 and ask if that shows the corrected basis you referred to.

A. Yes, it does.

Q. I think I will ask you then to explain Exhibit No. 30. First, did you also compile Exhibit No. 30, the tabulation?

A. I did.

[fol. 399] Q. Now, will you tell us how?

A. Exhibit No. 30 is the out of pocket expense as claimed by the railroad for those accounts which they claimed included out of pocket expenses in the previous case. Accounts in which they claimed no out of pocket expense have been eliminated. Maintenance of way figures are taken from Exhibit 12 for the entire year 1954, and the other figures are taken from Exhibit 13 for the last four months of 1954 and multiplied by three. The expenses claimed for the first six months of 1952 in the previous case, times two, are included in the column furtherest to the right. Head end expense is removed at the bottom.

I should explain also, that the 1954 figures include payroll taxes separated among the principal accounts, which

information was not available for '52 so that payroll taxes are included at the bottom of the '52 column pertaining to all of the accounts above that item.

Exam. Fuller: You mean for '54 it is in the respective accounts?

The Witness: No, it is at the bottom of maintenance of way, payroll tax, maintenance of equipment payroll tax. At the bottom of the transportation account there is a item of $57,204. There is no similar item we have information about for '52 figures. At that time the payroll taxes were included for the entire expenses only. For that reason the accounts such as maintenance of way have not been totaled in the '52 since that would provide an in-
[fol. 400] accurate comparison.

By Mr. Guthrie:

Q. The comparison at the bottom is however, accurate according to the figures. Is an accurate showing of the expense obtained for 1952 as against that for 1954.

A. In the method I have described.

Mr. Guthrie: Mr. Examiner, I would like to insert "Protestant's Exhibit 30" in the last column below the reference, "On Basis as Corrected, Protestant's Ex. 30." Inserted on Exhibit 29 there.

I call your attention to the fact, Mr. Examiner, that it was testified to by Mr. Stephenson that the figures for non-revenue passengers and their distribution are substantially the same now as they were in '52.

I would like to offer in evidence Exhibits 29 and 30, Protestant's Exhibits 29 and 30.

Exam. Fuller: Exhibit 30 does not include the Union Station?

Mr. Guthrie: No, we have another exhibit which is an overall one, but I haven't gotten to that. I am not ready for that yet.

Mr. Merrill: I would like to have ruling reserved until after cross examination.

Mr. Guthrie: I believe that is all I have right now. I assume Mr. Fisher will be available for recall, if necessary.

Mr. Merrill: I would like leave to study over these exhibits which have just been thrown at us in quite profuse volume here, until tomorrow morning.

Mr. Guthrie: I think that is a very fair request.

[fol. 401] Exam. Fuller: All right. Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

We will adjourn until 10:00 o'clock tomorrow, morning.

(Whereupon, at 4:40 p.m., an adjournment was taken until 10:00 a.m. Wednesday, May 18, 1954.)

[fol. 403] [Title omitted]

TRANSCRIPT OF HEARING—MAY 18, 1955

Met, pursuant to adjournment, at 10:00 o'clock a. m.

BEFORE:

BURTON FULLER, Examiner.

APPEARANCES:

(Same as heretofore noted.)

[fol. 405] PROCEEDINGS

Exam. Fuller: Let us proceed.

FRANCIS D. FISHER resumed and testified as follows:

Cross examination.

By Mr. Merrill:

Q. Referring, Mr. Fisher, to Exhibits 25 and 26, showing the fares of the Burlington and Rock Island, do either of those two railroads serve points in common with the Milwaukee Railroad other than the City of Chicago?

Mr. Guthrie: I think I will object to this cross-examination because I think that all Mr. Fisher did was to take and compute the rates and fares from the timetables, and I don't think that he professes to be a witness on the methods of operation in any respect.

Exam. Fuller: He ought to know that.

Mr. Merrill: He should.

Mr. Guthrie: If he knows.

The Witness: I presume, Mr. Merrill, that the precise answer to your question is shown on the maps of the suburban railroads, which you introduced.

By Mr. Merrill:

Q. That is correct, it is shown there. I am asking you whether you know they serve any common points other than the City of Chicago?

Mr. Guthrie: I suggest that he be shown the map.

Mr. Merrill: He has a whole set of exhibits.

[fol. 406] Mr. Guthrie: What is the fact?

Mr. Merrill: I think he knows that the three railroads all serve different territories.

Mr. Guthrie: I think they do.

Mr. Merrill: Sure, they do. If you are willing to stipulate to that, that will be enough.

Mr. Guthrie: Yes.

Mr. Merrill: Let the record show counsel stipulate that the Milwaukee and Burlington and Rock Island serve no common points other than the City of Chicago.

Mr. Guthrie: I believe that is true, in so far as in this neighborhood is concerned, at least.

By Mr. Merrill:

Q. Do your exhibits, Mr. Fisher, Numbers 25 and 26, purport to show all the railroads that are one hundred per cent dieselized in suburban service other than the Milwaukee Road?

A. They purport to show the comparison with the Burlington and with the Rock Island.

Q. Do you know whether there are any other railroads that are one hundred per cent operating a suburban ser-

vice in the City of Chicago other than the Milwaukee Railroad?

A. I do not.

Q. With respect to the Burlington and Rock Island, did you make any study to determine whether the costs of operation are lower or higher than the costs of the Milwaukee Railroad?

[fol. 407] A. I did not at this time, but I have studied in connection with the last Milwaukee case and in connection with those two railroads.

Q. I am speaking, of course, as of the present time, or for the past year.

A. I understand.

Q. Mr. Fisher, did you make any study to determine the current volume of traffic handled by the Milwaukee Road as compared to the Burlington and Rock Island railroads?

A. No.

Q. You did not?

A. No.

Q. Or any study to determine the traffic density per mile of railroad on those three railroads?

A. Not in connection with this case.

Q. Or, did you make a study to determine any other similarity or dissimilarity in operating conditions of the three railroads as of the present time or during the past year?

A. No.

Q. What railroad serves the nearest adjacent territory to that served by the Milwaukee Railroad?

Mr. Guthrie: I object; improper cross-examination, and this witness has simply testified to some computations he made. If he wants technical testimony as to railroad operation, this witness is not the person to get it from, and it is [fol. 408] improper cross-examination.

Mr. Merrill: I don't think so.

Mr. Guthrie: I think an operating man would know that better than Mr. Fisher as to what other railroads serve near it. He has got a map. Nobody is disputing it.

Exam. Fuller: Let us have the answer.

Mr. Merrill: He is representing the commuters; he ought to know.

Mr. Guthrie: If he knows.

The Witness: May I have the question read?

(Question read.)

By Mr. Merrill:

Q. We will refer to steam railroads as distinguished from electric railroads.

A. Well, as a matter of fact, the question actually——.

Q. Let me reframe the question, and I will shorten it up for you.

A. All right.

Q. It is not true that the Chicago and North Western serves a territory closer to that served by the Milwaukee than either the Burlington or the Rock Island railroads?

A. I do not know.

Q. You do not know?

A. No, sir.

Q. Is it not true that two railroads, namely, the Chicago, Aurora & Elgin and the Chicago and North Shore Railroad [fol. 409] compete with the Milwaukee in serving common points other than the City of Chicago?

Mr. Guthrie: I object.

Exam. Fuller. Do you know? Overruled.

The Witness: I know the North Shore serves common points with the North Western, and I believe it serves common points with the Milwaukee. I do not know about the Aurora and Elgin.

By Mr. Merrill:

Q. You know that the Chicago, Aurora & Elgin serves the City of Elgin, and you also know that the Milwaukee Railroad serves the City of Elgin?

A. That is correct. I know that both serve the City of Elgin.

Q. Now, please refer to Exhibit No. 24——.

A. Yes, sir.

Q. Can you personally vouch for the correctness of the percentages that are set forth on Sheets 1, 2 and 3 of that exhibit, wherein the out-of-pocket suburban costs are allocated? In other words, those percentages shown in the next to the last column?

A. When you say vouch for the correctness of the percentages that are set forth on Sheets 1, 2 and 3, do you mean are the percentages in the next to the last column transposed from the footnotes on Sheet 4 of Exhibit 30, as explained in my direct testimony?

Q. The question is: Can you personally vouch for the propriety of those allocations, the fairness of the allocations as a matter of your own knowledge, or merely representing [fol. 410] something you have compiled from an exhibit in the last case?

Mr. Guthrie: Just a moment. I object to this question as improper cross-examination. The witness did not purport to figure out the percentages. We put Mr. Olson on the stand to show how the percentages were arrived at, and how they were now allocable. We have in the notes the number of cars which were taken from Mr. Stephenson's testimony, which shows a ratio of twenty-nine plus per cent against the suburban, and used thirty per cent as a round figure rather than the twenty-nine point something or other, just as we had done in the last case with the seventy and thirty. Mr. Fisher never at any time purported to derive the percentages from his own knowledge. Those came from Mr. Olson and from Mr. Stephenson.

Mr. Merrill: That is good enough, Mr. Examiner. We will accept that statement as though testified to by the witness.

By Mr. Merrill:

Q. Now, to the extent that the percentages shown on Exhibit 24 used in allocating Union Station costs to the suburban service to all four of the railroads may be understated, then the amount you ultimately claim as properly chargeable to Milwaukee suburban is likewise understated, is it not, Mr. Fisher?

Mr. Guthrie: I object to the question as argumentative.

Exam. Fuller: Sustained.

By Mr. Merrill:

Q. Now, if I may refer you to page 1 of Exhibit 24.

[fol. 411] A. Yes, sir.

Q. Account No. 227-2, under the description of "Lighting", in which you show out-of-pocket costs for suburban service of $366, which represents twenty-five per cent of thirty per cent of the total, is that figure not erroneous, and has it not been computed not on a total of $9763.00, but instead on a figure of $1464.00? You may take the time to work out the proper answer if you want to.

A. I will.

Q. All right.

A. You are correct. It is in error.

Q. And, what should the amount be, Mr. Fisher, in the last column?

A. $732.00.

Q. Instead of $366.00?

Mr. Guthrie: If the witness would state just what he did there, I think it would help you to arrive at the $732.00, the method of computation, or the figures which he applied first to the thirty per cent.

The Witness: From the total operating expenses.

Mr. Guthrie: What did you use there, Mr. Fisher; what figure?

The Witness: $9783.

Mr. Guthrie: That is what amount?

The Witness: Of which thirty per cent is $2929, of which 25 per cent is $732.00.

[fol. 412] By Mr. Merrill:

Q. Now, referring to Account No. 227-5 on the same page, was not the same error made in computing the total in the final column as made in computing the total for the account "Lighting"?

A. It was.

Q. And what should the correct figure be?

A. $2717.00.

Mr. Guthrie: What account is that? 227? What account did you last testify to?

The Witness: 227-5.

Mr. Guthrie: What is the figure?

Exam. Fuller: Aren't we confused here?

Mr. Merrill: I am not, sir.

Exam. Fuller: All right. Aren't these percentages, or the theory of this case based on balance which would be half in the case of the total?

Mr. Guthrie: Let us look at the old exhibit. Let us find out. We can find that out in a minute. That is what I am doing.

Exam. Fuller: I am just asking.

The Witness: He is right.

Mr. Merrill: Mr. Guthrie put a question to him. I don't think he is. Can we suspend just a second?

Exam. Fuller: All right; off the record.

(Discussion off the record.)

Exam. Fuller: All right, let us go back on the record.

[fol. 413] By Mr. Merrill:

Q. So that, with respect to Account No. 227-5, instead of the figure shown of $1358.00, the figure should be $2717; is that right?

A. That is correct.

Q. Now, was the same error made in computing the amount in the last column in the next account item, 227-6, "All Other Repairs"?

A. It was.

Q. And, what should the figure be in the last column?

A. $5063.00.

Q. Instead of $2532.00; is that correct?

A. That is correct.

Q. Now, Mr. Fisher, please refer to Account No. 249, "Signals and Interlockers", on the same page, and in the next to the last column, you have shown 1.04 per cent, total. Is that the proper percentage you should have applied?

A. No. The proper percentage is—the decimal point was placed incorrectly—the proper percentage should be 10.4.

Q. And what should the figure in the final column be?
A. I will accept your figure for that—$7863.00.
Q. Instead of $789.00, is that correct?
A. That is correct. Did I say $7863?
Q. $7863, yes.
A. Yes.

Mr. Guthrie: What is that last figure, please?
The Witness: $7863.
[fol. 414] Exam. Fuller: Seven thousand, did you say?
The Witness: Yes. The decimal point was not placed properly.

By Mr. Merrill:

Q. Now, will you turn to your Exhibit No. 29 purporting to show the cash value, in cost of transportation furnished to non-revenue passengers apportioned between suburban and non-suburban employes?
A. Yes.
Q. In computing the cash value of the transportation, why did you not use a passenger mile basis representing transportation furnished the non-revenue passengers as compared to the passenger miles service rendered by the railroad for all passengers, rather than a straight passenger count basis?
A. I was not aware of a passenger mile figure for non-revenue passengers. If the length of ride between the two, the revenue and non-revenue passengers, were the same, I don't see that it makes any difference.
Q. And, if your premise were not sound, then it would make a difference, would it not?

Mr. Guthrie: I will object to this argument.
Exam. Fuller: All right.
Mr. Merrill: I will strike the question. Let it go.
Exam. Fuller: If it would make a difference, it would make a difference.
Mr. Merrill: Yes, it would.
Mr. Guthrie: That is absolutely true.

[fol. 415] By Mr. Merrill:

Q. Again referring to Exhibit No. 29, what allowance did you make on that exhibit for the amount of liability incurred by the railroad in hauling non-revenue passengers as compared to hauling revenue passengers?

A. None.

Q. What allowance did you make in those figures for the savings in cost to the railroad in the sale of tickets?

A. None. However, I could point out no Union Station expense is included in figuring the expenses, so that would far more than offset the other; far more than offset the cost of tickets in the suburban stations. I should also point out that these figures have a certain roughness due to the fact that it is a 1952 non-revenue passenger figure which is being used. We have not been supplied with, and don't know the current non-revenue figure.

Mr. Guthrie: Well, by way of comment, Mr. Stephenson commented that they were substantially the same.

By Mr. Merrill:

Q. Now, you purport to show the costs allocable to transportation of non-revenue passengers on an out-of-pocket basis. Are you representing, for example, in Line 14, that if the railroad did not haul deadheads that they would save in cash the amount of $227,663?

Mr. Guthrie: Just a minute. I object to that. He is not representing anything.

Mr. Merrill: Let us strike the exhibit then.

Mr. Guthrie: Just a minute. He is not arguing from this [fol. 416] exhibit. He is making this figure, and if you want to know the purpose of the exhibit, maybe he can state it. Or, perhaps, I can. The purpose of the exhibit, or what is represented by the exhibit is that the part of the expense in carrying non-revenue passengers is applicable to passengers using the through service, passengers employed in the direct service, and should be credited to suburban service and charged to through service, and that is the sound thing to do. It is a question of your allocation of costs, either on an out-of-pocket or a full distribution

basis. It is a question of where that expense should be charged, and the witness doesn't have to represent what is meant by it.

Mr. Merrill: Mr. Examiner, certainly I can find out what he is purporting to show by the exhibit, without interruption by Mr. Guthrie.

Mr. Guthrie: He was adding and subtracting.

Exam. Fuller: I think the witness could answer in the same way.

Mr. Guthrie: I don't like a lawyer on the witness stand as a lawyer.

Mr. Merrill: You put him on.

Exam. Fuller: Let him explain.

Mr. Guthrie: I don't think it is important to as to why he used them.

Mr. Merrill: Of course, I do, and, of course, I put the question to him.

[fol. 417] Mr. Guthrie: I think the question is highly improper.

Exam. Fuller: Overruled.

The Witness: Do you want our arguments?

Mr. Merrill: I don't want your arguments; I want your statements of fact, Mr. Fisher.

Mr. Guthrie: This is argument.

Mr. Merrill: It will be stricken if it is. Go ahead.

Mr. Guthrie: Read the question.

Exam. Fuller: He wants to know if the witness purports to show what would be saved if they didn't have any deadheads.

The Witness: No, it does not.

Exam. Fuller: All right.

Mr. Merrill: That is a fair assertion.

By Mr. Merrill:

Q. Mr. Fisher, have you had any railway operating experience of any kind?

A. No.

Q. Have you had any railway accounting experience of any kind? Have you ever worked as a railroad accountant?

A. I am not a licensed accountant of any sort, railroad or otherwise.

Q. All right, sir. You have used certain terms on your exhibit, one that strikes me particularly, being the term "out-of-pocket". What is your conception as reflected by these exhibits,—what is out-of-pocket expense?

Mr. Guthrie: I object. It is not material. He has told the [fol. 418] source of the figures in every case. The out-of-pocket computations are in there.

Mr. Merrill: He has added a few of his own, sir, on these exhibits, and I refer to Exhibit 24, Sheet 3, where Mr. Olson declined any responsibility for anything past a certain figure.

Mr. Guthrie: He can tell you where he got the figure.

Mr. Merrill: And Mr. Fisher then purported to pick up and vouch for the remaining figures. Also, on Exhibit 29, we have computations purporting to be on an out-of-pocket basis as corrected by protestants, and certainly we ought to know what is regarded as out-of-pocket expense, and what the witness regards as out-of-pocket expense.

Exam. Fuller: Let the witness answer.

The Witness: Our effort, in preparing these exhibits, was to determine the costs which the suburban service might fairly bear, and the exhibits are all pointed in that direction, and the final figures on the exhibits, and the adjustments made at the end of the exhibits are directed to that end.

By Mr. Merrill:

Q. Do I understand, then, that you use the out-of-pocket cost to mean whatever amount you deem is fair? Is that the criterion on which you selected your level of out-of-pocket costs?

A. I am not sure I understand the question.

Q. We will have the question read, sir, and if you don't understand it, then I will reframe it, or try to clarify it.

[fol. 419] A. All right.

(Question read:)

A. That certainly is not the case. We have used here, and I have shown where the sources of the out-of-pocket figures came from. The figures I think are fair might be far different figures, but the methods used and their source

are explained, and I do not by any means mean to agr
that the allocation of out-of-pocket costs by the Milwauk
are necessarily fair.

Exam. Fuller: You based your's on thei/ showing
some places, like in taking depreciation out, where, perha
as a matter of argument, you considered that as not out-
pocket cost?

The Witness: That is correct.

Exam. Fuller: Is that all that you deducted from ther

The Witness: On their exhibit?

Exam. Fuller: Exhibit 24.

The Witness: No. They are listed on the bottom of She
3. Depreciation is the largest of the deductions. The oti
two are mail and baggage accounts.

Exam. Fuller: Then, didn't you also take some accou
where they didn't show any out-of-pocket expense at oth
times and eliminate them entirely?

The Witness: That is correct. The exhibit, I believe,
referring to Exhibit 30.

Exam. Fuller: What would that be? Would that
maintenance of way, principally?

[fol. 420] The Witness: Principally; but there are oth
accounts also.

By Mr. Merrill:

Q. Let us take up the accounts you eliminated, then. W
you explain why you did eliminate such accounts?

A. I eliminated those accounts which the road previous
claimed included no out-of-pocket expense.

Q. I am referring to Exhibit 24, Mr. Fisher, Sheet
towards the bottom of the page, which says deduction
items not constituting out-of-pocket expense. We a
referring here to the Union Station exhibit, I should poi
out. Now, will you please explain, then, why you eliminat
those particular accounts?

A. I thought I had just agreed, Mr. Merrill, with t
Examiner, that we believed that the elimination of those a
counts in this proceeding should be had as a matter of arg
ment. If you want me to proceed with the argument,
right, but I don't want to argue that from the witness sta

Q. You have an exhibit in evidence here and purport

show certain figures. Certainly you are prepared to give a basis for those figures, are you not, or why you have eliminated certain figures. I don't want to argue with you either, Mr. Fisher, but I want you to state the reason why you included them or excluded them.

A. We don't believe that depreciation and out-of-pocket are charged to suburban service, in figuring the out-of-pocket expense which they should bear, the fully allocated [fol. 421] expense, and the same thing is true in the case of the Milwaukee with the mail and baggage account.

Q. Is the basis for that feeling the fact that the railroad would not be relieved of those expenses if it were to discontinue suburban service?

Mr. Guthrie: Just a minute. He is asking the witness wholly what conclusions he would draw from those figures. That is not a subject of testimony from the witness stand. He is not testifying as an expert accountant at all. He is testifying he took out depreciation and the Commission is going to say whether or not depreciation is a proper out-of-pocket expense, and this witness took it out. He took it out the last time in similar exhibits as shown by exhibits put in evidence.

Exam. Fuller: That is the difficulty of putting a lawyer on the stand.

Mr. Guthrie: I will get to that. I am more and more inclined to think I will have to get an accountant on the stand to answer this kind of question.

Exam. Fuller: You can leave it this way: Where he has taken it out, he is not prepared to give any basis for it.

Mr. Merrill: Any justification for it.

Exam. Fuller: Any opinion testimony.

Mr. Guthrie: I think that is right.

Exam. Fuller: Let us leave it that way.

Mr. Guthrie: Opinion testimony or evidence is not proper [fol. 422] from this witness. It might be ethical on cross-examination; I don't know, but I don't want anybody to think that is what we are doing here, and that is why I am stating this thing. I think this witness could make an excellent argument, but this isn't the place to make it.

By Mr. Merrill:

Q. Referring to Exhibit No. 30, you have eliminated certain accounts from there as stated in your direct testimony,——.

A. Which exhibit, sir?

Q. 30. —and the remaining figures, you will agree, purport to be out-of-pocket costs, do they not?

A. As explained, yes.

Q. Now, the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, in their formula providing for comparison of railroad revenues in suburban service, and defines out-of-pocket expense as follows: The out-of-pocket or separable expenses are those added expenses which are occasioned by the existence of suburban traffic. Stated differently, they are those expenses which, over a period of time, could have been avoided if suburban service were not required. Did you, in eliminating the items, which you state you have excluded, follow the criterion of the definition of out-of-pocket costs which I have just read?

A. I think I stated precisely the method used.

Q. In other words, you did not purport to follow that criterion, did you?

[fol. 423] A. No, I did not.

Exam. Fuller: If you did, it was an accident.

The Witness: Yes, and I have been shown to be capable of doing that.

By Mr. Merrill:

Q. And, so, to the extent that you have excluded accounts which would, under that definition, be properly included, you did substitute your judgment for that of the Bureau?

A. No.

Mr. Guthrie: I object.

Exam. Fuller: Sustained.

Mr. Guthrie: And I ask that the answer be stricken.

Exam. Fuller: The motion is granted.

Mr. Merrill: At this time, Mr. Examiner, we shall object to the introduction of Exhibit 24, because, by Mr. Guthrie's

own admission, this witness is not qualified to account for the figures used in the exhibit, and there has been no other supporting testimony for that portion of the exhibit on the bottom of page 3. We object to at least that portion of the exhibit, but if Mr. Guthrie wants to bring in a qualified witness, certainly that would present another phase.

Exam. Fuller: Is that all you are objecting to?

Mr. Merrill: To that particular exhibit, and that is the only objection I will make. We ask that portion of the [fol. 424] exhibit, however, be stricken.

Exam. Fuller: The objection will be overruled. Exhibit 24 will be received. Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Merrill: Exhibits 24, 29 and 30 were the ones I asked for your ruling to be reserved on.

EXHIBITS RECEIVED IN EVIDENCE

Exam. Fuller: All right. Exhibits 24, 29 and 30 will be received in evidence.

(Protestants' Exhibit 24, Witness Olson; Protestants' Exhibits 29 and 30, Witness Fisher, received in evidence.)

Exam. Fuller: Is that all you have?

Mr. Merrill: He is not my witness. I am through on cross-examination, yes, sir.

Exam. Fuller: All right.

Mr. Guthrie: May we have about a five minute recess. I am not sure I can go on with the other things now.

Exam. Fuller: We will take a recess.

Mr. Guthrie: Just a minute, Mr. Examiner.

Exam. Fuller: All right, let us resume a minute.

Redirect examination.

By Mr. Guthrie:

Q. Will you take a pencil and paper for a minute. I want you to do a little figuring for me. I want to get this first.

Exam. Fuller: Do that off the record.

Mr. Guthrie: All right.

[fol. 425] Exam. Fuller: We will take a recess.

(Recess.)

Exam. Fuller: On the record.

Mr. Guthrie: On Protestants' Exhibit No. 24, Mr. Examiner, certain errors have been pointed out in the computations, and I ask leave to make the following corrections physically on the face of the exhibit.

On page 1 of the tabulation, Account 227-2, "lighting", the figure in the last righthand column, under "Out-of-Pocket Costs, Suburban Service", strike $366.00, and insert $732.00.

Account 227-5, same column, strike the figure $1358.00, and insert $2717.00.

Account 227-6, same column, strike the figure $2532, and insert $5063.00.

Account 249, "Signals and Interlockers" change 1.04 per cent to 10.4 per cent in the column headed "Out of Pocket Cost, Suburban Service", with an (E) and (J) in front of it, and insert in the last righthand column, or, rather, strike the $789.00 and insert $7863.

The total in the last righthand column under "Out-of-Pocket Costs, suburban service", at the bottom of page 1, on Exhibit 24, strike the figure $106,995, and insert the figure $118,325.

Now, turn to page 3 of that exhibit, and opposite the description, Union Station Expense, in the last column, under "Out-of-Pocket Costs, suburban service", strike the [fol. 426] figure $174,686 and *and* insert in place of it, $186,016.

The next figure in the same column, being the amount of Union Station expense for suburban service attributable to C. M. St. P. & P., on basis used by the Witness Olson, 42.22 per cent, referring to Note K, last column at the right, strike the figure $73,751 and insert the figure $78,536, the total.

Exam. Fuller: $78,536?

Mr. Guthrie: $78,536.00. The total at the bottom of that page, net out-of-pocket expense, exclusive of payroll taxes.

in the far column at the right, strike the figure $34,865.00, and insert the figure $39,650.00.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

Mr. Guthrie: On the notes attached to Exhibit 24, Note K, number of suburban cars of each railroad, Union Station, in the total figures, strike the figure 222,687 and insert 222,587.

Mr. Fisher, that is all for the present. I want to ask Mr. Stephenson one or two questions in connection with the payroll tax matter.

Exam. Fuller: All right.

Mr. Guthrie: Was leave granted to make those corrections?

Exam. Fuller: That is right. The reporter has agreed to make the corrections on the official copy.

Mr. Guthrie: And the Examiner gives us leave to make those corrections?

[fol. 427] Exam. Fuller: Yes.

(Witness excused.)

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: Let us go back on the record.

Mr. Guthrie: I will call Mr. Stephenson as an adverse witness.

Exam. Fuller: I will call him as my witness, then.

Mr. Guthrie: I don't think it makes much difference.

Mr. Merrill: I wanted to be sure what capacity he is appearing here in.

R. S. Stephenson having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Guthrie:

Q. I wish you would take Exhibit 29 in the prior case, introduced in evidence, I think, as Protestants' Exhibit— I will tell you in a moment——.

Exam. Fuller: Q-1.

By Mr. Guthrie (continuing):

Q. —Q-1, and which is embodied in our Protestants' Exhibit 21 in this case, and I want you to look at Sheet 2 on page 29, and I also will show you the original Exhibit 25 in the prior case, which was introduced in evidence as a protestants' exhibit, and by prior case, you know I mean the prior 1952 case——.

[fol. 428] A. Yes, sir.

Q. (Continuing) —which was introduced in evidence as Protestants' Exhibit Q-2, in the prior case, and which is embodied in our Exhibit 21 in this case— Have you got that exhibit, the original Exhibit 25?

A. Yes, sir.

Q. Will you please turn to it?

A. Yes, sir, I have it.

Q. You will note that in the original Exhibit 25, which I have just referred to, Line 42, Chicago Union Station Expense, C. M. St. P. & P. proportion, the figure in the last righthand column is $75,374.00.

A. Yes, I have it.

Q. And, if you will look, as well as at Exhibit 29, Exhibit No. 30 in that case, you will see that the total expense, out-of-pocket, attributed to the Chicago, Milwaukee and St. Paul in that case— No. You will not see it there. Strike that question. In the prior case, in Exhibit 29, Sheet 2, the Milwaukee proportion of the payroll tax attributable to the suburban service was taken as $10,005 on a fully distributed basis, wasn't it——.

Mr. Fisher: Sheet 2 of Exhibit 29.
The Witness: Yes, I have the figure, $10,005.

By Mr. Guthrie:

Q. Now, I want you again to refer to Exhibit 30, and if you will take a pencil and paper, I think you can very readily get what I am driving at.

[fol. 429] Exam. Fuller: Are you talking about Exhibit 30 in this case now?
Mr. Guthrie: No. I am talking about it in the prior case.
Exam. Fuller: All right.

By Mr. Guthrie:

Q. I will call your attention now to your testimony before the Illinois Commerce Commission in Case No. 40486, page 1077 of the transcript; a question by me. This is my examination of you, Mr. Stephenson, in that case:

"By Mr. Guthrie: Where did you get the figure $72,000 which was corrected to $75,374, in Exhibit 24?
"The Witness (Mr. Stephenson): The figures came from Exhibits 29 and 30 introduced by Witness A. B. Olson."

Mr. Guthrie: Referring, if the Examiner please, to exhibits put in evidence in the Illinois Commerce Commission Case No. 40486 as Exhibits Q-1—Protestants' Exhibits Q-1 and Q, respectively, and incorporated in Protestants' Exhibit 21 in this case.

"Q. Will you turn to Exhibits 29 and 30. Will you tell me how you got those figures in Exhibit 29 and 30?
"The Witness: The amount of $75,374 is composed of a proportion of the $10,005 in pen and ink on Sheet 2, the portion being $2531."

Now, will you look at Sheet 2 of Exhibit 29?

A. Yes.
Q. Mr. Stephenson, that is the payroll tax item, is it not?
[fol. 430] A. It is.

Q. "Is a proportion of what? Of $10,005?

"A. Appearing on Sheet 3."

I think that is a misprint. It should be Sheet 2, Sheet of Exhibit 29.

"A. That is the proportion of $10,005.

"Q. What proportion?

"A. The amount of the proportion being $2,531.

"Q. Yes, what else?

"A. $2531. I will repeat it. Plus amount of $42,283 appearing on Sheet 3 of Exhibit No. 30.

That is the operating expense of Union Station on that exhibit.

"Plus amount of $42,283 appearing on Sheet 3 of Exhibit No. 30, plus amount of $22,994 appearing on Sheet 1 of Exhibit 29, being the amount of interest and the amount of $13,399 appearing in pen and ink on Sheet 1 of Exhibit 29, the total of the four items being $81,207, from which there is subtracted the amount of $5833 appearing in pen and ink on Sheet 3 of Exhibit 29, that being concession reserve, net result being $75,374."

Did you so testify in the last case?

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

The Witness: Subject to some omissions which I do not deem to be material, I so testified.

[fol. 431] Mr. Guthrie: A few extra words. And, at the same time and place:

"Q. How did you arrive at your proportion, $10,005?

"A. The amount was arrived at by taking the proportion of payroll tax of $10,005 and out-of-pocket expenses were to the total payroll expense. The details do not appear in the exhibit.

"Q. In other words, the ratio of $2531 to $10,005 is equal to the ratio of the out-of-pocket payroll expense to the total payroll expense?

"A. That is right."

Did you so testify in the last case?

A. Yes, I did.

Q. Now, if you will take a pencil and paper, what percentage of payroll taxes did you allocate to out-of-pocket expense, $10,005; you used $2,531.

A. 25.30 per cent.

Mr. Guthrie: That is all.

(Witness excused.)

Mr. Guthrie: Mr. Examiner, in view of the fact that we do have to make some corrections in figures carried forward on other exhibits we prepared, I would appreciate it if we could now adjourn until two o'clock, and at that time I can have them here in corrected form.

Exam. Fuller: Off the record.

[fol. 432] (Discussion off the record.)

Exam. Fuller: Let us go back on the record. Let the record show that by stipulation of the parties, the annual reports of respondent to the Interstate Commerce Commission for the years 1952, 1953 and 1954 are stipulated into this record. Is that agreeable to you, Mr. Merrill?

Mr. Merrill: Yes, sir.

Exam. Fuller: Mr. Guthrie?

Mr. Guthrie; Yes, sir.

Exam. Fuller: Mr. Gibbons?

Mr. Gibbons: Yes, sir.

Mr. Guthrie: Just to avoid confusion, of course, respondent is probably right, but we have referred to them as petitioner here. I have reference to the Chicago, Milwaukee & St. Paul Railroad.

Exam. Fuller: Yes. Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. We will now adjourn until nine thirty Monday morning, May 23, 1954, at this same place.

(Whereupon, at 12:10 o'clock p. m., Wednesday, May 18, 1955, an adjournment was taken to Monday, May 23, 1955, at 9:30 o'clock a. m.)

[fol. 434] TRANSCRIPT OF HEARING—May 23, 1955.

[Title omitted]

Met, pursuant to adjournment, at 9:30 o'clock a. m.

BEFORE: BURTON FULLER, Examiner.

APPEARANCES:

(Same as heretofore noted.)

[fol. 436] PROCEEDINGS

Exam. Fuller: Let us proceed.
Mr. Guthrie: I will call Mr. Hammond.

WILLIAM M. HAMMOND was sworn and testified as follows:

Direct examination.

By Mr. Guthrie:

Q. Will you state your name, please?
A. William M. Hammond.
Q. And where do you live, Mr. Hammond?
A. 401 South LaSalle Street, Chicago.
Q. And, where is your office?
A. 327 South LaSalle Street, Chicago.
Q. And, what is your occupation or profession?
A. I am a licensed public accountant. I am licensed in the State of Illinois as a public accountant. I have, however, for many years, spent most of my time on matters involving railroad and public ultility problems, such as valuation and cost studies, securities issues, rate proceedings and other matters.
Q. Now, will you please give a general outline, Mr. Hammond, of your education and experience?
A. I was educated in the common schools of the State of Kansas. I attended Baker University in Baldwin, Kansas,

and thereafter pursued some studies in transportation for a period with the University of Chicago, at which time I was employed by the Burlington Railroad. I was employed [fol. 437] by the Burlington Railroad for a period of ten years in the accounting department, after which I served as chief statistician of the Chicago and Alton and affiliated lines for a period of three years.

At the end of that period, I accepted a position with the Illinois Commerce Commission, known then as the Public Utilities Commission of Illinois, and served there as an examiner of accounts, assistant chief accountant, and for sixteen years was chief accountant of the Commission.

Q. What sixteen years was that, Mr. Hammond?

A. Those sixteen years were from 1918 to 1934.

Q. Go ahead.

A. In 1934, I resigned my position with the Commission and opened an office for general public work on accounting, mainly in public utility and railroad matters.

Q. Didn't you do some work in connection with the Interstate Commerce Commission in Washington also while you were engaged with the Illinois Commerce Commission?

A. While I was chief accountant of the Commission, I was assigned by the Commission, at the request of Commissioner Lewis, to sit in with the Commission's men, dealing with valuation of railroads whose territory crossed Illinois. I spent considerable time——.

Q. You mean with the Interstate Commerce Commission men?

A. With the Interstate Commerce Commission men, yes. I simply represented the Illinois Commerce Commission in those assignments.

Q. That was in 1926 and 1927, was it not?

[fol. 438] A. Yes, that is true.

Q. When you were chief accountant for the Commission, were you engaged in rate cases at all?

A. Yes; I was engaged in most of the rate cases that came before the Commission.

Exam. Fuller: You were also in the Illinois Central suburban case before us, were you not?

The Witness: Yes, I testified in that case.

Mr. Merrill: On behalf of whom, Mr. Hammond?

The Witness: In behalf of the commuters on the south side.

Mr. Merrill: Thank you, sir.

By Mr. Guthrie:

Q. Now, after you left the Commission, the Illinois Commerce Commission, in 1934, briefly give us some of your experience?

A. Well, I have engaged in work in connection with various types of utilities. In the transportation field, I served for over half my time, for ten years or so, under appointment of Federal Judges, Judge Wilkerson and Judge Igoe, and their trustees, in the attempt to work out the consolidation of local transportation systems in Chicago under private control.

I also was employed by the trustee in the reorganization of the Chicago, Aurora and Elgin, in which case I testified on the basis for capitalization of the new company.

Q. Didn't you do some work with the Securities and Exchange Commission, also?

[fol. 439] A. Yes. I had charge of the drafting of their accounting system for holding companies and for service companies. I did that work in 1935 and 1936.

Q. Now, Mr. Hammond, will you please turn to Petitioner's Exhibit 21 in this case, which is an accumulation of exhibits in the prior case, the 1952 case, before the Illinois Commerce Commission, No. 40486. I believe you have it there. Yes, you have it in front of you.

A. Yes, sir.

Q. And, will you turn to Exhibit 24 in the prior case, which has to do—that is, Petitioner's Exhibit No. 24, which has to do with non-revenue passengers?

A. I have it.

Q. And, Exhibit 43, I think, is the photostat you have of that exhibit, which was an Illinois Commerce Commission exhibit.

A. Yes, I have that.

Q. Now, Mr. Hammond, you testified in that case, did you not?

A. I did.

Q. In connection with your testimony, did you make a study of those two exhibits with respect to non-revenue passengers and their allocation?

A. Yes, I did.

Q. Will you please turn to Exhibit No. 29 in the present and pending case?

A. I am afraid I do not have Exhibit 29.

[fol. 440] Q. Just a moment, and I will give it to you. (Producing document.) Have you examined that exhibit?

A. Yes, I have.

Q. Do you know, in general, the method used in Exhibit 29, in determining the cash value and costs of service furnished to non-revenue passengers for the year 1954 as apportioned between suburban and non-suburban passengers?

A. Yes.

Q. Are you familiar, I mean, with the method used?

A. Yes, I am.

Q. What is that method?

A. It utilizes the information which appeared in Exhibits Nos. 24 and 43.

Q. Those were Exhibits 24 and 43 in the Illinois Commerce Commission 1952 rate case?

A. Yes.

Q. Go ahead.

A. For the separation of passengers between revenue and non-revenue, it shows the distribution of non-revenue passengers, the percentage, and it comes down to a statement of the cash value of the transportation furnished non-suburban employes on the basis of the revenue that they would have paid at the regular rates charged the public. The last section shows the same data on the basis of the expense of transportation as claimed by the petitioner in this case, and it shows the figures on a fully distributed basis and on an [fol. 441] out-of-pocket basis.

Q. The number of non-revenue passengers is taken from the old case, is it not, the 1952 case?

A. Yes, that is based on the 1952 count.

Q. And the apportionment also?

A. Yes.

Q. When I say apportionment, I mean apportionment be-

tween employes working in the suburban division and those in the other divisions of the railroad; isn't that correct?

A. That is true.

Q. Mr. Hammond, have you an opinion as to which is the sounder basis for the—strike that, will you please? Now, Mr. Hammond, have you an opinion as to whether or not the costs of transporting, or the revenue that would be derived on a revenue basis from transporting employes engaged in the through service or non-service work should be credited to the suburban service for rate-making purposes?

A. Well, they are both significant figures. I believe that the costs, since the other data under consideration is based on cost of operation mainly,— I think the allocation of cost of service to them is the better basis to use.

Q. You mean the allocation of costs as against the revenue that would be derived?

A. Yes.

Q. The cost of rendering the service?

[fol. 442] A. Yes.

Q. Do you believe that that is a fair credit to suburban against the expenses of the suburban service for the purpose of determining rates?

A. Yes, I believe it is. I base that on the general theory that I think I testified to in the former case, when I presented similar information in that case, that the suburban non-revenue passenger service is rendered regardless of any service that the suburban lines derive from it, and that the commuters should not be asked to bear the cost of transportation for which the whole system derives the benefit.

Exam. Fuller: Well, what this amounts to is that since the non-suburban employes traveling on passes amount to nine per cent of the suburban passengers that they ought to bear nine per cent of the expenses?

The Witness: I don't remember the percentage in particular, but that is, in substance, what I am saying.

Exam. Fuller: And, don't you think you ought to consider the fact that there is somewhat less liability for these employes; so much less ticket expense.

Mr. Guthrie: Would you mind having that read to me?

Exam. Fuller: I said, don't you think you ought to con-

sider there is somewhat less liability and somewhat less ticket expense for the employes?

The Witness: Yes, to the extent there is less expense, I [fol. 443] think that would be properly considered.

Exam. Fuller: I was just wondering. You didn't have any figures on the passenger miles. These are based on the number of passengers, are they not?

The Witness: It is based on the number of passengers, yes.

Exam. Fuller: Have you made any study as to whether, if you used passenger miles, it would make any difference?

The Witness: My recollection is that two years ago, in preparing similar data, I did make a check from that angle, and it didn't make a substantial difference, but I don't have any papers with me to support my recollection.

Exam. Fuller: I might ask you one question further: You don't think it would be fair to determine, or credit should be given just to determine the expense that would be saved if you didn't have the pass passengers?

Mr. Merrill: What was that last, Mr. Examiner?

Exam. Fuller: The pass passengers.

The Witness: The theory of this case, as I understand it, is based on the cost of rendering service, and, of course, you could pick up any one segment, whether non-revenue or revenue, any one class of passengers, and separate them out and say you didn't charge them anything except the additional expense which they incurred. You could take any group of passengers and make such an allocation, but I don't see that that would be the rational way to proceed, and I believe the same ought to apply to this [fol. 444] particular group.

Exam. Fuller: Was this revenue based on the average?

The Witness: Yes, sir.

Exam. Fuller: It is based on the average passenger miles?

Mr. Guthrie: Let me have that exhibit? Let me hand you the exhibit. May I have that question again?

(Question read.)

Exam. Fuller: It is on Exhibit 24.

Mr. Guthrie: Exhibit 24 in the old case. Look at Ex-

hibit 21 which you have there, Mr. Hammond. Just leave that open. He is now referring to Exhibit 24 in the old case.

The Witness: May I have the question again, please?

(Question re-read.)

The Witness: Well, the statement is based on the number of revenue and non-revenue passengers. Off the record. I am a little slow in finding it. I have not studied it. I made one two years ago, but the details are a little unclear until I look it over again.

Mr. Guthrie: Let me interpose, if the Examiner, please. If you will look at Exhibit 43 in the old case, which was prepared by the Illinois Commerce Commission, you will see there the method of allocation and the number of passengers.

Exam. Fuller: Yes, I have that.

Mr. Guthrie: I think it is spelled out rather exactly in that exhibit. This exhibit we put in is substantially a copy [fol. 445] with such changes that have had to be made.

Exam. Fuller: Proceed.

Mr. Guthrie: I will ask the reporter to please mark these documents as Exhibits 31, 32, 33 and 34; that is, protestant's exhibits bearing those numbers.

(Protestant's Exhibits 31, 32, 33 and 34, Witness Hammond, were marked for identification.)

By Mr. Guthrie:

Q. Mr. Hammond, I hand you document that has been identified as Protestant's Exhibit No. 31. Have you examined and checked the figures in that exhibit?

A. I have.

Q. Will you please state the method that was used in making up the exhibit?

A. It is a tabulation of Union Station expenses for the year 1952 attributable to Chicago, Milwaukee, St. Paul and Pacific suburban service. The statement is divided into two sections as indicated by the column headings, the first of which shows expenses attributable to suburban

service of the four occupying roads on both a fully distributed and an out-of-pocket basis.

The second section is Union Station expenses attributable to Chicago, Milwaukee, St. Paul and Pacific suburban service taken as 44.82 per cent of the total, and that, again, is on a fully distributed basis and an out-of-pocket basis, a column being shown for each.

Q. Now, where did the figures come from that were derived here?

[fol. 446] A. They were derived from Petitioner's Exhibit No. 29 and their Exhibit No. 30 in the Illinois Commerce Commission case, No. 40486.

Mr. Guthrie: If I may interpose, Mr. Examiner, those are incorporated in Exhibit 21 in this case, and they were introduced by the protestants in the prior case. Go ahead, Mr. Hammond.

The items included are payroll taxes, interest, property taxes, credit for concessions, operating expenses. The operating expenses are as they appear at page 3 of Exhibit 30. The total of the items is determined by doubling the figures for the first half of 1952, so as to give the total for the year 1952. On a fully distributed basis the total is $744,526, and on an out-of-pocket basis, $326,342—.

By Mr. Guthrie:

Q. $336,342, isn't it?

A. That is correct.

Q. All right.

A. And, on the other side of the page, under the column attributable to the Milwaukee, the total is $333,696 on a fully distributed basis, and $151,148 on an out-of-pocket basis.

Q. Now, Mr. Hammond, when you referred to Exhibit 30, you meant Exhibit 30 incorporated now in our Exhibit 21; Exhibit 30 in the Illinois Commerce Commission case, No. 40486?

A. Yes, that is what I referred to.

Q. Now, will you please refer to Exhibit 29 in that case.

That is where you got the payroll taxes, interest and [fol. 447] property taxes and concessions revenue, isn't it?

A. Yes, they all appear in Exhibit 29, all except the item of operating expenses.

Q. Now, I believe there is a note on here stating that the ratio of payroll tax on out-of-pocket basis to same expense on fully distributed basis is 25.30 per cent.

A. Yes, sir.

Q. Where was that derived?

A. That was derived from the testimony given by Mr. Stephenson in the former case, No. 40486. That appears at—I thought I had the page reference of the record here, but I don't have it.

Q. It was testified to in this case, but the record page isn't there because we don't have the transcript. It is on Exhibit 32.

A. Yes, it is on Exhibit 32. I have a copy of the testimony here of that particular part.

Q. You have a copy of that testimony, do you not?

A. Yes.

Q. You can give the record page of the other case, can't you?

A. Beginning at page 1077, where these items are discussed. At page 1080, about the middle of the page, there appears——.

Q. 1080, isn't it?

A. Yes.

Q. All right.

A. The relationship of the item, $10,005, appearing in the next to the last column of this Exhibit 31, and the [fol. 448] $2,531 in the last column; the $2,531 is determined by applying 25.30 per cent to the $10,005 figure. That is explained by Mr. Stephenson at page 1080.

Q. Let me turn your attention again to Exhibit 31, to the deductions made from the amount attributable to the Chicago, Milwaukee, St. Paul and Pacific suburban service on an out-of-pocket basis.

A. Yes.

Q. What are these deductions based on?

A. The three items represent depreciation of the structures. The main item is road property or the general

structures used. That is an item that is related to the property value, to cover the property value, and it would seem to be pretty much on a par with the item of interest, in that it applies on the total property and would not be reduced by the non-performance of commuter service.

Now, it is not an out-of-pocket expense in the light of a current expense, but the fact that it is created more by the amortization of the structure itself than the use of it by daily operations, it would seem to me it is pretty much in the category of interest charges and property taxes.

Q. How about the mail handling item?

A. That is omitted because the record shows, I believe, that mail service was discontinued in 1952 with the possible exception of very limited delivery that was continued.

Q. Where did you get— Where did the figures come from, $30,318, $783.00, $605.00 and $9,529, to which you applied [fol. 449] the 44.82 per cent?

A. Those appear in Petitioner's Exhibit 30 introduced in this case under No. 21, in the last column of that exhibit.

Q. In the account number reference, too?

A. The account numbers are referred to. For instance, after the $30,318 item, Account 266, and the other two items appearing in the same column.

Q. Now, Mr. Hammond, let me direct your attention again to Exhibit 31, the additional deductions, from Protestants' Exhibit Q, Petitioner's Exhibit 29, in the Illinois Commerce Commission case, No. 40486, and also incorporated in this case in Protestants' Exhibit No. 21.

A. Yes, sir, I have it.

Q. What is the basis for those additional deductions?

A. On the ground that the interest charges would not be reduced, or the property taxes, by the non-performance of suburban service by the Milwaukee.

Q. The figures incorporated therein were taken from the exhibits in the prior case, weren't they?

A. Yes.

Q. And brought down to the bottom, to this figure of $109,748, which is on a full year's basis, isn't it?

A. Yes. That is by multiplying the $54,874 for the six months' period by two.

Q. And the final conclusion is stated in the last line?
[fol. 450] A. That is true.

Q. This is on the same basis that computation was made in the 1952 case?

A. Yes.

Q. I think you arrived at $20,500 for the half year instead of $20,700; isn't that right?

A. That is right. I offered an exhibit in that case.

Q. Yes.

A. On the same basis.

Q. Now, let me refer you to Protestants' Exhibit No. 32, please, Mr. Hammond.

A. I have it.

Q. What is that?

A. That is a statement showing payroll taxes for 1954 and allotment to Milwaukee suburban service.

Q. Now, will you tell us the basis on which that is made up?

A. The total shown on Line 1 is taken from Column 2, Sheet 5, of Exhibit 14 of Case No. 31742.

Q. That is, Petitioner's Exhibit 14 in the pending case, isn't it, Mr. Hammond?

A. Yes.

Q. All right.

A. Now, the other figures are derived by the application of percentages which have been used by the petitioner in the case, No. 40486, in Exhibit 29. In other words, in that [fol. 451] exhibit, on page 2 of Exhibit 29, appears the payroll taxes for the half year of 1952, $118,074. 58.39 per cent of that is assigned to through and suburban service, and of the resulting figure 32.38 per cent is assigned to the suburban service and 44.82——.

Q. 44.22, isn't it?

A. 44.82 I have here.

Q. It is 44.22, I am quite sure, in the present 1954 case— Oh, you mean the other case?

A. Yes, 44.82.

Q. In the 1952 case, yes.

A. In the 1952 case.

Q. Well, 42.22 is equivalent in the pending case, is it not?

A. Yes.

Q. All right.

A. And the resulting figure in this case of $19,020 is—that is, 25.30 per cent of that is taken as representing the out-of-pocket expenses.

Q. That is the same percentage basis that you explained a minute or two ago in connection with the 1952 statement, is it not?

A. Yes, it is.

Q. I direct your attention to Protestants' Exhibit 33, and I will also show you in that connection Protestants' Exhibit No. 24. I think you have it there.

A. Yes.

Q. In the pending case?

[fol. 452] A. Yes.

Q. Will you tell us what Protestants' Exhibit 33 is, and the basis used?

A. The statement is a summary of Union Station expense for 1954 allocable to the Milwaukee suburban service on a fully distributed basis and on an out-of-pocket basis. The first item, taken from Protestants' Exhibit 24, shows $242,441 on a fully distributed basis, and $39,650 on an out-of-pocket basis. Added to that are payroll taxes of $19,020 on a fully distributed basis and $4,812 on an out-of-pocket basis.

Q. Those are the figures you just testified to in Exhibit 32, are they not?

A. That is true. The two items are added to give a total of $261,461 on a fully distributed basis, and $44,462 on an out-of-pocket basis.

Mr. Guthrie: Now, if the Examiner please, I have a long question in the nature of a hypothetical question, which I am going to ask Mr. Hammond, which I have written out, and I will hand a copy of the question to the Examiner and also to counsel for the other side, so that you may read it, and I will read it to the witness.

Exam. Fuller: Very well.

By Mr. Guthrie:

Q. Mr. Hammond, according to the testimony in this case, the Milwaukee Road has a contract with the Burling-

ton and the Pennsylvania Railroads, who, with the Milwaukee Railroad, are the proprietary railroads of the [fol. 453] Union Station, whereby certain expenses of the Union Station are apportioned among the railroads in proportion to the number of cars using the station—suburban cars being counted as equal to four-fifths of a through car; that is, each steam locomotive being counted as equal to two cars, and each diesel unit as equal to one car.

The effect of this contract is that if the suburban service of the Milwaukee Railroad were discontinued, the Milwaukee Road would be relieved of that proportion of the expenses distributed on a use basis equal to the ratio of the number of suburban cars, as stated, to the total number of cars using the station. This would be true, although the expenses thus apportioned were, in part, expenses of maintaining through facilities, or non-service facilities, in the station.

The petitioner relies in this case, as set forth in Exhibit 14, on the theory that the total expense that would be relieved under the contract, if the suburban services were discontinued, is a fair charge against suburban service for rate-making purposes, irrespective of whether the amount charged to the suburban services pursuant to the contract is used for through service, non-service or suburban service facilities.

I will also show you Exhibit 24, which follows the theory exemplified by Petitioner's Exhibit 30 (Protestants' Exhibit Q-2, Case No. 40486) incorporated herein as Exhibit 21, originally known as the "Oliphant Formula," in which the charges to the suburban services, through service and [fol. 454] non-service expenses are derived according to the station facilities required for each of those expense subdivisions.

Have you an opinion as to which is the sound basis for determining the charge to suburban service for rate-making purposes, either on a fully distributed or out-of-pocket basis? Have you an opinion; yes or no?

A. Yes, I have.

Q. What is that opinion?

A. It is my opinion that the sound basis is to make an

allocation of the actual cost of rendering service at the time it is being rendered as set forth in the petitioner's original presentation in Exhibit 30, and as presented by the protestants in Exhibit 14 in this proceeding.

Q. Exhibit 24, you mean, don't you?

A. Exhibit 24 in this proceeding.

Q. Yes. What is the theory of the division of expenses in the old Petitioners' Exhibit No. 30, Case No. 40486, and in Exhibit 24, Protestants' Exhibit No. 24?

A. As I see it, the procedure is to take the service being rendered, determine costs as nearly as they can be determined by allocation where necessary on some reasonable basis, and determine the cost of each type of service by the expense that is actually incurred in rendering that service. I believe that has been the customary method over the years, by most statisticians who have dealt with the subject, and this company's own statistician [fol. 455] was on sound ground, I think, when he presented his original formula.

Q. In other words, you assigned to each service the cost of the facilities necessary for that service; isn't that right?

A. Yes.

Q. Now, is your conclusion affected by the fact that the Milwaukee Railroad has entered into a contract whereby its share of all expenses, whether assignable to non-service, through service or suburban service, is determined by a count of cars that includes suburban cars?

A. I do not think that because the over-all settlement is made on the basis of a car count that that determines the amount that is chargeable to the various services rendered, such as through traffic, non-service, suburban, mail handling, baggage, or any other item.

Exam. Fuller: Is it your opinion that the method advocated by you necessarily implies that the contract itself is not a fair method of dividing the expenses between the proprietary lines?

The Witness: No, it does not necessarily imply that. The contract was entered into many years ago, and, so far as I know it represents, or makes a fair allocation between the roads of their over-all expenses, but I don't

consider that the over-all expenses allocated to a given line can necessarily be broken down as between those different services by the use of that same over-all formula or some part of it. The theory, if applied, has to adopt a hypothesis that suburban service will not be render, which [fol. 456] is purely an hypothesis. One can hardly conceive of any actuality in which this suburban service would not be rendered. If it were not rendered as a suburban commutation service, the common carrier duties of this line would require it to carry the public on the line in some form of vehicle or cars, and it seems to me that to attempt to split down or break down the costs of rendering the suburban service by relying on an hypothetis, that is so far removed from any reality, is not the best approach.

Exam. Fuller: Are you familiar with this Statement 441, the so-called Edwards' Formula?

The Witness: Yes. At least, I have been familiar with it. I don't recall perhaps all of the detail.

Exam. Fuller: Do you agree with the general theory that out-of-pocket expense in suburban service may properly be determined by what would be saved if the suburban service was not performed?

The Witness: I believe there is merit in that view; that when you apply it to a situation of this type, I don't believe it is a very realistic approach.

Exam. Fuller: What do you mean? So far as the Union Station is concerned?

The Witness: Yes.

Mr. Guthrie: Let me ask a question right there.

Exam. Fuller: I was just going to ask you whether you thought there was an alternative method; namely the use method for determining this charge against suburban service?

[fol. 457] The Witness: Well, the use method, as I understand it, is something the petitioner used here originally in attempting to allocate the expense in accordance with the service rendered on the suburban division. There are very detailed breakdowns here in their exhibits of the costs which follow the service rendered, or the other term is for use, I believe.

Mr. Guthrie: Let me ask a question if I may.
Exam. Fuller: Yes.

By Mr. Guthrie:

Q. Mr. Hammond, if, by contract, the Milwaukee agreed that all expenses of the through facilities at the Union Station ought to be paid from suburban service, do you believe that the expense of maintaining through facilities would thereby be allocable to suburban service for rate-making purposes?

Mr. Merrill: I object to that as speculative.
Exam. Fuller: Let us have the question read.

(Question read.)

Mr. Guthrie: Let me re-state the question:

By Mr. Guthrie:

Q. If, by the contract, it was agreed that all the expenses of maintaining the through facilities in Union Station were to be paid from suburban service, or allocated to suburban service, do you believe that all those expenses of maintaining through facilities would thereby become properly chargeable to suburban service for rate-making purposes?

Exam. Fuller: That is obviously speculative.
Mr. Guthrie: That is the principle.
[fol. 458] Mr. Merrill: It is pure speculation.
Mr. Guthrie: I think the question may be objectionable because it is argument, to tell you the truth.
Mr. Merrill: All right.
Mr. Guthrie: But that is the principle, Mr. Examiner.
Mr. Merrill: Can't we argue the case later, Mr. Examiner.
Mr. Guthrie: You would have to have all of these things, by contract, allocated to suburban service. Your contention is that the apportionment to suburban service, does not necessarily govern.
Mr. Merrill: I move that all of Mr. Guthrie's gratuitous remarks and arguments be stricken from the record, and ask that he confine himself to the testimony.

Mr. Guthrie: This was a discussion of the principles, and I think it is proper.

Mr. Merrill: Let it be off the record then.

Mr. Guthrie: No, I want it on the record.

Mr. Merrill: Can I have a ruling on my motion, Mr. Examiner?

Exam. Fuller: Overruled.

By Mr. Guthrie:

Q. I show you Protestants' Exhibit 34, which I think you have there, Mr. Hammond.

A. Yes, I have it.

Q. Have you checked and analyzed this exhibit?

A. Yes, sir.

Q. Will you explain it, please?

[fol. 459] A. The exhibit is a summary statement of revenues, expenses and out-of-pocket income of suburban passenger operation for 1952 and 1954, based on petitioner's figures, with adjustments as noted below, and on Sheets 3 and 4 attached to the exhibit. The exhibit gives reference to the attached sheets. I presume that it is not desired that I read the figures.

Q. Well, I think we can shorten this considerably. This is a summary statement of the figures taken as shown on Sheets 2, 3 and 4 of this exhibit?

A. Yes.

Q. I have just one question on those 1954 expenses. They have been adjusted to affect Diesel operations for the entire year, have they not?

A. Yes, that is my understanding.

Mr. Guthrie: Mr. Examiner, they have been adjusted on the scheme outlined in the conferences that we had, whereas maintenance of way expenses were taken for the entire year, shown as Petitioner's Exhibit No. 12, and other expenses were taken as three times the expense for the last four months, which roughly was about the formula, according to my memory, that we agreed upon at that time, and that is the method. If you will look at Sheet 4 of this exhibit, you will see that it is explained that way.

Maintenance of way is Petitioner's Exhibit 12, which is an annual statement. The other expenses are in Petitioner's Exhibit No. 13, which is the four months' statement. Now, [fol. 460] that is my remembrance of what we thought would be a fair way to allocate this. The revenues are in Exhibit 13.

I will offer in evidence Protestants' Exhibits 31, 32, 33 and 34.

Mr. Merrill: Will the Examiner withhold ruling, please, pending cross-examination?

Exam. Fuller: Yes.

Mr. Guthrie: There is one more matter I want to bring up. Can I have those exhibits, please? On Petitioner's Exhibit No. 30——

Mr. Merrill: You mean protestants', don't you?

Mr. Guthrie: I do. I am sorry. (Continuing) —Protestants' Exhibit 30, there are a couple of trivial errors in the figures at the bottom that I want to correct, because we carried forward the correct figure, and I ask leave of the Examiner to correct them on the basis of this exhibit.

Exam. Fuller: Proceed.

Mr. Guthrie: At the bottom under the caption "General, payroll tax," it reads this way now: Payroll tax, under Column (i), 149; under column 11, it reads 547. That should be 447. The total general should be $8,379 instead of $8,479; and is carried forward as $8,379 on Exhibit 34, Sheet 4. That changes the total operating expense by $100 to $1,984,294, from which should be subtracted $63,497 instead of $63,501. Change $63,501 to $63,497, which is a difference of four dollars, leaving, for total passenger [fol. 461] operating expenses, $1,920,797, the difference being from $1,920,903 to $1,920,797. The changes are trivial, but they are called for. They were taken from earlier figures. May I have leave to make those on the face of these exhibits, Mr. Examiner?

Exam. Fuller: Yes, very well.

Mr. Guthrie: That is all from Mr. Hammond on the direct.

Mr. Merrill: May we have about a ten minute recess at this time, Mr. Examiner?

Exam. Fuller: We will take a recess.

(Recess.)

Exam. Fuller: We will proceed.

Mr. Guthrie: I think if I could be permitted to point out one more thing about our theory on this thing, and as to the Edwards formula and the other formula. What we are talking about here is allocation of expenses, not only something used in suburban service. This is a great big station, and before we start allocating expense on any basis we have to find out how much is needed for suburban service, and how much for other service. It is a facility that is not primarily a suburban service facility. That thought, at least, is what I wanted to throw out here, and I think until the new theory developed in the last case, it was always thought you had to first find out what part of it was a suburban facility before you started allocating expenses.

Exam. Fuller: Well, I think the record is clear.

[fol. 462] Cross examination.

By Mr. Merrill:

Q. Mr. Hammond, did you prepare any of the exhibits that have been introduced in this case?

A. Not in this particular case, but——.

Q. Just in this case is all I am interested in at the moment.

A. I have checked all of them over and checked the sources of the exhibits.

Q. Did you check all the extensions shown on the exhibits for correctness?

A. No, I didn't check the mathematics in all exhibits.

Q. Did you check the accuracy of the percentages used in every case?

A. I think I checked the accuracy of those I used in these exhibits, or attempted to do so.

Q. Is your statement, then, that you did check the accuracy of all percentages shown on the exhibits concerning which you have testified to this morning?

A. I didn't check as to the accuracy of all of the percentages shown. I took some percentages that had been used by the company on Exhibit 29—this 58.39, for instance.

Q. Did you make a spot check, Mr. Hammond—is it fair to say that—without attempting to check everything?

A. I didn't attempt to check every extension or all of the mathematics in the exhibits.

Q. All right, sir. Referring to Protestants' Exhibit No. 29, [fol. 463] have you made any attempt in that exhibit, Mr. Hammond, to make a computation of cash value of transportation on the basis of the actual passenger miles furnished the non-revenue passengers?

A. No.

Q. Is that also true with respect to allocating the expense of transporting non-revenue passengers?

A. I did not carry it out on a passenger mile basis.

Q. In your opinion, would a passenger mile basis more fairly and more accurately reflect the value of the service rendered to non-revenue passengers as distinguished from a passenger count basis?

A. I think it would be more accurate. As I checked the comparison with two results in the former case, however, it is my present recollection, sir, that they didn't reflect very much difference. I haven't attempted to recheck that at this time.

Q. Mr. Hammond, I will call your attention to Exhibit No. 24 in the prior proceeding, which is incorporated as a part of Exhibit 21 in the present proceeding, and you may take my word for this, or you may wish to compute it yourself—it is immaterial to me. However, you will notice the exhibit I refer to lists total number of passengers carried and total passenger miles on both sheet 1 and sheet 2, representing the north line and the west line of the railroad, respectively, and the average passenger miles for the two divisions equals 19.87 miles?

A. May I ask for that again. I didn't get the item you [fol. 464] were talking about. You are talking about all passengers or revenue passengers?

Q. These are the non-revenue passengers, which are the only type of passengers shown by Exhibit No. 24 in the old case.

A. Now, what is it on Exhibit 24? What column?

Q. It appears in the next to the last and the third from the last column on Sheets 1 and 2 of Exhibit 24. Now, I am

presenting that figure as the railroad's computation of the passenger miles, average passenger miles of non-revenue passengers, and I would refer you now to Exhibit 23 in the present proceeding, Lines 49 and 50.

A. What exhibit is that?

Q. Exhibit 23, Lines 49 and 50 introduced herein by the protestants, showing the average haul per revenue passenger to be 22.82 miles. It would appear, would it not, that to use the same average haul for non-revenue passengers as for revenue passengers would result in an error of approximately fifteen per cent in your figures; is that correct, and I am assuming that the figure I gave you based on Exhibit 24 in the old case is correct.

Mr. Guthrie: What was that last figure given?

Mr. Merrill: 22.82, taken from Exhibit 23, Lines 49 and 50.

Mr. Guthrie: By the old case, the figure is 21.93, isn't it?

Mr. Merrill: May we go off the record here, Mr. Examiner?

Exam. Fuller: All right, off the record.

(Discussion off the record.)

[fol. 465] Exam. Fuller: On the record.

The Witness: These figures I used are based on 1952, not 1954, and any comparison with these two figures ought to be made on the basis for the same period. I don't see they properly compare with the 1952 on that item.

By Mr. Merrill:

Q. I have a question pending, Mr. Hammond, and unless there is an objection to it, will you kindly answer my question?

Mr. Guthrie: As a matter of mathematics, I think it is about fifteen per cent.

Mr. Merrill: If you will stipulate to that, we will get along here.

Mr. Guthrie: I will stipulate that the percentage—I don't know what your figure was—twenty-two what?

Mr. Merrill: 22.82.

Mr. Guthrie: I will stipulate three is fifteen per cent of twenty.

The Witness: I have no question about your percentage figure——

Mr. Merrill: Just a moment. There is an answer going into the record here.

The Witness: I have no correction on the use of the fifteen per cent as comparing 1952 with 1954 figures. The point I was making is that it is not a proper comparison to take the average in one class for 1952 and the other for 1954, which might vary the percentage one way or the other.

[fol. 466] By Mr. Merrill:

Q. Well, I don't want to argue with you, Mr. Hammond, except to point out for your information that the protestants have offered the 1952 figures as representative for 1954. I would gather from your answers to the Examiner, Mr. Hammond, that you made no allowance whatsoever in computing the value of the free transportation or in allocating the expense of the free transportation or the savings to the railroad which would be realized from a lower or lesser liability to the non-revenue passengers, or for the savings in the sales of tickets; is that correct?

A. That is correct.

Q. Now, Mr. Hammond, is there any relation whatsoever intended to be shown by the computations on Exhibit No. 29 in the present proceedings between the costs or expenses thereon shown and the actual added out-of-pocket costs to the railroad of handling the non-revenue passengers?

Mr. Guthrie: Read that question, please?

(Question read.)

Mr. Guthrie: I don't understand the question.

Mr. Merrill: I will reframe it.

The Witness: Did I testify to Exhibit 29?

Mr. Merrill: You referred to it.

Mr. Guthrie: I will give it to you, Mr. Hammond.

Mr. Merrill: This is it right here, Mr. Hammond, if you want to look at it.

[fol. 467] The Witness: I see. May I have the question read?

Mr. Merrill: I will reframe it in response to an objection and perhaps I can simplify it.

The Witness: All right.

By Mr. Merrill:

Q. Mr. Hammond, does Exhibit 29 in any way purport to show added out-of-pocket costs to the railroad of handling non-revenue passengers?

A. No.

Q. Now, you testified something about the obligation of the railroad to render suburban service under the law. Do you know of any obligation under the law that the railroad has to render suburban service for non-revenue passengers?

Mr. Guthrie: I will object to that question. I don't know that this witness is qualified to testify as to what the obligation is under the law. The fact is that this railroad, like all railroads, carries their own employes free. What difference does it make whether it is an obligation under the law or not?

Mr. Merrill: Mr. Examiner, Mr. Guthrie here was quite silent when Mr. Hammond testified to the railroad's obligation in connection with rendering suburban service.

Mr. Guthrie: I asked no question of that kind, and this is not a proper question.

Mr. Merrill: The question is proper as a preliminary question.

Mr. Guthrie: It is a matter of legal argument, and not for this witness to answer. I don't suppose he knows what the [fol. 468] obligation would be.

Mr. Merrill: He seemed to know on direct examination.

Mr. Guthrie: My objection is valid.

Mr. Merrill: I think it is proper.

Exam. Fuller: The objection is sustained.

Mr. Merrill: I want to make another try, Mr. Examiner.

By Mr. Merrill:

Q. Mr. Witness, in your prior testimony, when you referred to the obligation of the railroad to render service, did you have in mind the revenue or the non-revenue passengers?

Mr. Guthrie: What testimony are you referring to?

Mr. Merrill: Weren't you here this morning, Mr. Guthrie?

Mr. Guthrie: You have said in his prior testimony. Do you mean in the present or in the other case?

Mr. Merrill: In the present proceeding.

The Witness: I didn't single out any class. I merely made reference to that which everybody knows is, at least, a common carrier's duty. It is there to render railroad service to the people who desire the service, and I was merely making reference to that in connection with the hypothesis that a certain part of its service might be abandoned. What I had in mind was that there could be, and so far as I can see, no abandonment of service of any part to the public, although there might be a change of rates or change of classification.

By Mr. Merrill:

Q. Is that because of the need of the service by the reve- [fol. 469] nue passenger, Mr. Hammond?

Mr. Guthrie: I object. He can argue that. I don't see any point in pursuing it with the witness.

Exam. Fuller: Sustained.

Mr. Merrill: Mr. Examiner, I will drop the question, but with the observation that Mr. Guthrie's concern about arguing seems to apply only when the railroad is asking the questions.

Exam. Fuller: Proceed.

By Mr. Merrill:

Q. Now, Mr. Hammond, if I may refer you to Protestants' Exhibit No. 31, which you have discussed this morning, and referring you to the accounts dealing with depreciation, I believe you testified that you do not regard depreciation to be an out-of-pocket cost in the light of a current expense. Am I correct?

A. Yes.

Q. You do recognize, do you not, that depreciation of property and plant and machinery is accelerated due to use?

A. In using the term "accelerated", I assume you have in mind some standard or usual method from which an ac-

celeration could take place; in other words, there could be no acceleration unless there was some increase in service. Is that what the question means?

Q. I think your point is a good one, Mr. Hammond, and what I meant to compare it to was whether or not the depreciation was not greater for property, plant and plant [fol. 470] machinery when in use than when merely deteriorated through the lapse of time? Do I make myself clear?

A. Yes, sir.

Q. All right, sir. Would you answer the question, then?

A. The wear and tear element in the depreciation rate would, of course, be influenced by the density of use.

Q. And, you recognize there is such a wear and tear element, do you not, sir?

A. As one of the many elements that enter into the depreciation rate, there is the age, weathering, obsolescence, public requirements, and many other, or several other elements which appear in the definition of "depreciation", and wear and tear is one of the elements.

Q. Yes.

A. I might add this, if I may, that as to the main structure investment here, the daily use would have very little influence, I would think, except perhaps as to tracks and things of that sort that receive some constant friction and use; but as to the major part of the buildings, I would think that the use element would have very little effect on the depreciation, and——.

Q. Mr. Hammond, did you——?

A. Pardon me. Would you permit me to add to that?

Q. Go ahead.

A. That depreciation is not provided anywhere on rails and tracks. Thank you.

[fol. 471] Q. You are welcome, sir. Would you regard the Chicago Union Station facility as a joint facility, Mr. Hammond?

A. It is jointly used, and I presume it would have to come within that broad definition.

Q. You are familiar, I gather from your direct examination, with the fact that the amount of rental paid by the Milwaukee Road for the use of the Chicago Union Station is

based upon the number of cars, both through and suburban, which it operates in and out of the station, are you not?

A. Yes.

Q. And, you are also familiar with the fact that the Chicago Union Station is a facility for the handling of passenger trains exclusively? Are you aware of that, sir?

A. Yes.

Q. Now, with that in mind, there are then only two services for which the Union Station expense incurred by the Milwaukee Railroad could be allocated, one being suburban service and the other being the through service; is that correct?

A. Those are the two main categories. I believe there are some allocations for non-service facilities in the expense items.

Mr. Guthrie: I couldn't hear the answer.

The Witness: There are some allocations to non-service expenses.

By Mr. Merrill:

Q. If I may hand you Petitioner's Exhibit 14 in the present proceeding, and refer you to the last column on sheet 9, have you any reason to doubt or is there any doubt in [fol. 472] your mind that the amount of $305,529.92 is the amount which the Milwaukee Railroad would be relieved of of its Chicago Union Station expenses were it to render no suburban service, Mr. Hammond?

Mr. Guthrie: I object to that, because I think it would require an examination of the contract, which they haven't put in evidence, and what the re-allocation of expenses would amount to, I hardly think that this witness can answer.

Exam. Fuller: I think that is a good question for an expert. Overruled.

Mr. Merrill: I thought we had one here, Mr. Examiner.

The Witness: Well, I have not had time to examine this exhibit thoroughly. I can not say anything as to the accuracy of the figure to which you refer. However, I am willing to grant that on the theory and basis of the exhibit,

there is a substantial amount that would be shown on the basis, as I say, of the exhibit.

By Mr. Merrill:

Q. Now, if I may refer you to the same page, Mr. Hammond——?

Mr. Guthrie: What page does that appear to be on?

Mr. Merrill: Sheet 9.

Exam. Fuller: What are you talking about now?

Mr. Merrill: Exhibit 14, the same exhibit we were just talking about, sir, and in the third column of figures entitled "Use Basis"——

[fol. 473] The Witness: What page is that?

Mr. Merrill: Page 9, sir.

The Witness: Thank you.

Mr. Merrill: Will you read the question thus far, Mr. Reporter, please?

(Partial question read.)

By Mr. Merrill (continuing):

Q. —you will note a total cost for through and suburban service for the Milwaukee Railroad on a use basis of $1,186,404.34. Now, if you will also note in Column 7 that the use basis for through service has been allocated in the amount of $778,190, and in the column No. 10, on a use basis for suburban service, of $408,303.44, the latter two figures equalling the total through and suburban use basis as I previously stated.

A. What was the question?

Q. I haven't come to the question yet.

A. I am sorry.

Q. I am getting everything oriented until I can ask the question, Mr. Hammond.

A. All right.

Q. I will ask you to take my word as to what the evidence has shown in this case, and keep that in mind as factors on which you base the answer to my question. Having in mind, Mr. Hammond, that approximately a equal number of suburban and through trains are operated by the

[fol. 474] Milwaukee Road into and out of Union Station; also that the number of suburban cars which it operates into and out of Union Station are approximately twice the number of the through cars, and having in mind that the number of suburban passengers which use the Union Station are approximately three times the number of through passengers, does the allocation on a use basis between the suburban and the through service, as shown on Sheet 9 of Exhibit 14, appear to unduly favor the through service as compared to the suburban service?

Mr. Guthrie: Let me object to the question. In the first place, unless I am mistaken, the statement that there were twice as many suburban cars as through cars is incorrect. That is one thing; there are twice as many through cars as suburban cars, according to Sheet 10 of this Exhibit 14. So that is one thing in the assumption, or in the question that is assumed that is exactly contrary to the evidence.

Furthermore, to say whether it unduly burdens suburban service, I don't believe that that is relevant in this case. If you are burdening the suburban service with something which isn't properly attributable to the operation of that service, that burden shouldn't be there, whether it is a cent or two or three million dollars. The question whether it unduly burdens is not relevant, and I object to the question on two grounds: First, the question assumes facts which are not in evidence, but which are contrary to the evidence, and, secondly, the question itself is irrelevant to any issue in this case.

[fol. 475] Exam. Fuller: Reframe the question.

Mr. Merrill: I stand corrected with Mr. Guthrie's correction there. I am very sorry I misstated it. I thought I had stated it correctly, but I realize I did not do so, and I thank Mr. Guthrie for calling that to my attention.

Exam. Fuller: I think you made another mistake. Isn't it three and a half to one on the suburban basis?

Mr. Merrill: I was using approximate figures, and I understated it, perhaps; about three or three and a half to one.

Exam. Fuller: Reframe the question so that we will have it clear in the record.

Mr. Merrill: I will do that.

By Mr. Merrill:

Q. Assuming that the Milwaukee Railroad operates approximately twice as many through trains in and out of Union Station as suburban trains—strike that question. I will get it started right yet:

Assuming, Mr. Hammond, that the Milwaukee Railroad operates in and out of Union Station approximately the same number of through and suburban trains; that the number of cars in through trains are a little bit less than twice the number of suburban cars, and assuming that the number of suburban passengers out-number the through passengers who use the Union Station by three or three and a half to one, does it appear that the allocation shown on Sheet 9 of Exhibit No. 14 of the Union Station expenses on a use basis unduly favor the through service as compared [fol. 476] to the suburban service?

Mr. Guthrie: I will object to the question for the second reason, the second reason that I gave before, and I believe the objection is well-founded, Mr. Examiner.

Exam. Fuller: The objection is overruled. I assume you mean unduly favors the suburban?

Mr. Merrill: No, I put it this way: If it doesn't favor, then it can't overstate the suburban.

Exam. Fuller: Strike that I said.

The Witness: I could not answer that question yes or no. There were several factors you recited, which figures I don't have in mind. If I were going to give an answer on that, I would want to study them together and weigh them, and I would also want to know more than I can see in a short examination of this exhibit as to how this ownership on a use basis is worked out. I attempted to make some examination of it yesterday, and I got lost in the maze of figures without having the benefit of any testimony or an explanation of it, and I don't feel competent at this time to pass any opinion on the accuracy or lack of accuracy of the results developed here.

Mr. Merrill: That is fine, sir. Thank you. I believe I have only one more question, Mr. Hammond—and I won't even ask that, sir. That is all.

Exam. Fuller: Do you have any redirect examination?

Mr. Guthrie: No, I have nothing further of this witness.
[fol. 477] Exam. Fuller: That is all.

(Witness excused.)

Exam. Fuller: Do you introduce the exhibits in evidence, Mr. Guthrie?

OFFERS IN EVIDENCE

Mr. Guthrie: Yes, I do offer my Exhibits 31 to 34, both inclusive.

Exam. Fuller: Exhibits 31 to 34, both inclusive, will be received in evidence.

(Protestant's Exhibits 31 to 34, both inclusive, Witness Hammond, were received in evidence.)

Exam. Fuller: Let us proceed.

Mr. Guthrie: Mr. Robertson, will you take the stand, please?

ALBERT D. ROBERTSON was sworn and testified as follows:

Direct examination.

By Mr. Guthrie:

Q. State your name, please?
A. Albert D. Robertson.
Q. Where do you live?
A. 122 South Chapel Street, Waukegan, Illinois.
Q. What is your employment?
A. I am employed by the Illinois Commerce Commission.
Q. In what capacity?
A. Transportation analyst.
Q. And, how long have you been so employed by the Illinois Commerce Commission?
[fol. 478] A. Since January 2, 1950.
Q. Mr. Robertson, can you tell us or do you know when the rates, the present rates were established by the Rock Island; the suburban rates?
A. I do not know when the order was entered. The case was filed in 1952.

Q. And, I am referring now to the suburban service of the Rock Island.

A. I understand.

Q. Can you tell us what the ratio of steam locomotives to diesel locomotives was at that time?

A. At that time in the month of April, 1952, in suburban service, the Chicago, Rock Island and Pacific used the following locomotive miles of diesel locomotives:

Principal, 56,383; helper, 2,191, and light, 7,088, making a total of diesel locomotive miles in the suburban service of 65,662.

On steam locomotives, during the same month, the principal locomotive miles were 51 and light was only six, making a total of fifty-seven. The steam locomotive operation was .08 per cent of the diesel locomotive operation.

Exam. Fuller: That is in the Rock Island suburban service?

The Witness: That is right.

By Mr. Guthrie:

Q. What are your first figures?

A. Under diesel locomotives, the principal was 56,383.

[fol. 479] Q. Over fifty-seven steam locomotives?

A. That is 56,383 miles as principal, of diesel locomotives.

Q. In other words, fifty-seven steam locomotives as against 65,662 locomotive miles of diesel?

A. In the month of April, 1952; that is correct.

Q. And, since then, it has been entirely dieselized, hasn't it?

A. It was entirely dieselized prior to January 1st, 1954.

Q. And that figure was .08 of one per cent?

A. That is right.

Q. Tell us about the Burlington?

A. On the Burlington, I don't have the locomotive miles, for the reason that separation is not necessary. They have been one hundred per cent dieselized in suburban service since September, 1951.

Q. That was before the present fate was established?

A. That is right.

Q. Have you got the North Western?

A. I am waiting for the locomotive miles, the locomotive mile figures on the North Western. I don't have them as yet. On August 11th, 1952, the Chicago and North Western operated 72 steam locomotives and three diesel locomotives.

Q. That is in suburban service?

A. That is in suburban service.

Q. That is the time their rate was established, wasn't it?

A. That is the time this rate case was filed, yes, sir.

[fol. 480] Q. You don't know where it is at the present time?

A. No, I don't know where it is at the present time. I am waiting for that information on the telephone. I have a call in to get the locomotive miles, but I haven't received the information as yet.

Mr. Guthrie: Maybe Mr. Merrill will stipulate what it is at the present time. I do not know that I know. It is about fifty-fifty at the present time, isn't it?

Mr. Merrill: Mr. Guthrie, I believe the statement already appears of record.

Mr. Guthrie: I am not sure.

Mr. Merrill: But, according to our information, as of March of this year, the North Western was 55.7 per cent dieselized.

Mr. Guthrie: In the suburban service?

Mr. Merrill: In the suburban service.

Mr. Guthrie: I will accept that figure. I think that is all I have from Mr. Robertson.

Mxam. Fuller: Any questions?

Mr. Merrill: Yes.

Cross examination.

By Mr. Merrill:

Q. You do not know the relative cost of diesel operation vs. electric operation, do you——?

Mr. Guthrie: I object.

Mr. Merrill: Let me finish my question——.

Mr. Guthrie: I am sorry.

[fol. 481] By Mr. Merrill (continuing):

Q. —as a means of train propulsion?

Mr. Guthrie: I object to the question as improper cross-examination.

Exam. Fuller: We haven't had any electric operation in this case.

Mr. Merrill: Not yet, but we are going to have. I will——.

Mr. Guthrie: He can make him his own witness, and ask him the question.

Mr. Merrill: All right, I will make him my own witness just as to that question.

By Mr. Merrill:

Q. Do you happen to know?

A. I don't know. I have made no study of that.

Mr. Merrill: That is all.

Mr. Guthrie: That is all.

Exam. Fuller: You are excused.

(Witness excused.)

Mr. Guthrie: Mr. Examiner, I don't believe that these figures will be disputed, and I would like to have them go into the record. I will hand them in to the reporter to be copied in, and I will offer these figures. They are a comparison of rates of fares in suburban service per mile with some rates in the through service. For example, at the present time, the rate to Sturtevant, Wisconsin, is 2.53 cents per mile—I don't know whether Sturtevant is in Wisconsin or not. Is it?

[fol. 482] Mr. Merrill: Yes, it is.

Mr. Guthrie: Under the proposed suburban fares it is going to cost more per mile to go to Fox Lake from Chicago than it is to go to Sturtevant, Wisconsin, although Sturtevant is 12.5 miles further away, and I am going to read these into the record, and, of course, any objection as to relevancy is proper, but I would like to have the Milwaukee Road people agree that the figures stated are correct. They can examine them later. I just got them.

Exam. Fuller: See if counsel has any objection just to the comparison.

Mr. Guthrie: May we be off the record?

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. Let the passenger men check them and we will just put the comparisons in and that is all. They should have a chance to check them.

Mr. Guthrie: Oh, yes, and if there are any mistakes, we will correct them. May we put them in subject to check, and I will correct it on the record if it is wrong. I am assuming that it is correct.

Exam. Fuller: Go ahead. Let us not stop for that.

Mr. Guthrie: Let me say this on the record. Subject to correction, I would like to put the following figures into the record comparing suburban rates of fares with rates to the [fol. 483] other stations north, and I will hand this to the reporter and he can copy it *is*.

Exam. Fuller: All right, as soon as it has been checked, we will permit it to be copied in the record.

Mr. Guthrie: I am only going to add the state after each one of them, so we can tell where the station is. That is all, then, Mr. Examiner.

Exam. Fuller: All right, the respondent may proceed.

Mr. Merrill: My next witness is checking the fares, but let the record show on the last exhibit or statement that the railroad makes objection to the introduction of such evidence as immaterial to the present case and without proper verification on the part of the—strike that last part—as immaterial to the case.

Exam. Fuller: The objection is overruled on the ground of materiality. I would like for respondent to check the figures.

Mr. Guthrie: I want them to check them, too.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. All right, let those fare figures be copied into the record.

Chicago to	Miles	Present		Proposed	
		One-way fare	Cents a mile	One-way fare	Cents a mile
Western Avenue, Ill.	3.1	.15	4.84	.25	8.06
Elmwood Park, Ill. [fol. 484]	10.4	.27	2.60	.32	3.077
Bensenville, Ill.	17.4	.45	2.59	.54	3.10
Deerfield, Ill.	23.9	.61	2.55	.77	3.22
Elgin, Ill.	36.8	.94	2.55	$1.18	3.21
Fox Lake, Ill.	49 5	$1.25	2.53	1.60	3.23
Walworth, Wis.	73.5	1.85	2.52	2.28	3.10
Sturtevant, Wis.	62	1.57	2.53		
Milwaukee, Wis.	85	2.12	2.49		
Janesville, Wis.	99	2.28	2.30		
Madison, Wis.	140	3.25	2.32		
Minneapolis, Minn.	421	10.19	2.42		

Mr. Merrill: May we go off the record again for a moment, Mr. Examiner?

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record. Proceed.

Mr. Guthrie: I have nothing further.

Mr. Merrill: Mr. Pain?

J. K. Pain, having been previously sworn, resumed and testified, in rebuttal as follows:

Direct examination.

Offers in Evidence

Mr. Merrill: Mr. Examiner, before proceeding with Mr. Pain, if we have not yet offered the exhibits previously introduced by Mr. Stephenson, and I would like to make a blanket offer of Exhibits 1 through 19 just to make sure I [fol. 485] have not omitted any. May I do so at this time?

Mr. Guthrie: I might say with regard to Exhibits 1 through 19, without restating it, that we do not agree with the theory on which some of those exhibits were received.

I think Exhibit 14 is one, and we have stated, I believe, our position without going through the trouble and taking the time to do it again on each of these exhibits. Subject to that, we have no other objection to them; they do advance the petitioner's theory of this case, but we don't agree with that theory in some respects.

Exam. Fuller: Exhibits 1 to 19, inclusive will be received in evidence.

(Petitioner's Exhibits 1 to 19, both inclusive, were received in evidence.)

Mr. Guthrie: Incidentally, I think that I have offered all of ours, but I will also make a blanket offer of our exhibits from 20 through 34, which I think were admitted, but if not, I would like to have them in.

Mr. Merrill: Subject to our previous objections, we have no further objection.

Exam. Fuller: There were some qualifications on some of them.

Mr. Merrill: Yes, sir.

Exam. Fuller: Exhibits Nos. 20 through 34 will be received in evidence.

(Protestants' Exhibits 20 through 34, were received in evidence.)

Mr. Merrill: May I have marked for identification as [fol. 486] Exhibit No. 35, a five page exhibit, being scales of the proposed Milwaukee Road fares as compared with those in effect on other railroads, all in the form of line graphs?

Exam. Fuller: Exhibit No. 35 will be marked for identification.

(Petitioner's Exhibit No. 35, Witness Pain, was marked for identification.)

By Mr. Merrill:

Q. Will you state your name, please?

A. J. K. Pain.

Q. Are you the J. K. Pain who previously testified in this proceeding?

A. I am.

Q. And you have been sworn?

A. I have.

Q. I hand you document which has been marked for identification as Exhibit No. 35. Will you briefly explain what that exhibit shows?

A. Page 1 of Exhibit 35 is a comparison of the Milwaukee Road's proposed one-way fares on a scale basis with those now in effect on the Illinois Central and the Chicago, South Shore and South Bend railroads. The Chicago, South Shore & South Bend rate per mile is 3.375 and the Illinois Central is 3.33, and our proposed scale is 3.2.

Q. You are referring to cents per mile?

A. I am referring to cents per mile.

[fol. 487] Q. All right, sir. How are the Milwaukee Road's proposed fares shown on that page and on the following pages?

A. They are below those of the Illinois Central and the Chicago, South Shore and South Bend.

Q. They are shown by a solid line; is that correct?

A. That is correct.

Exam. Fuller: How does the proposed minimum compare with their's?

The Witness: The proposed minimum is 25 cents as compared with the Illinois Central, which is 22 cents. They carry only up to seven miles, though.

Exam. Fuller: What about the South Bend?

The Witness: The South Bend suburban service doesn't start until fifteen miles, so they don't have any.

Exam. Fuller: Go ahead.

The Witness: Page 2 is a comparison of the proposed Milwaukee Road round trip fares in the suburban district as compared with those on the Illinois Central and the Chicago, South Shore and South Bend now in effect, and our basis is 180 per cent of the one-way fare. That is the way our round trip fares are figured. The South Shore and the Illinois Central are double the one-way fare. Our line is shown in all instances here as the solid line.

Page 3 is a comparison, on the same basis, of ten-ride fares in Chicago suburban territory as compared with the [fol. 488] Illinois Central ten-ride fares.

Page 4, is a comparison of our proposed 25-ride fares with the present Illinois Central 25-ride fares.

Page 5 is a comparison of our proposed 46-ride fares with the present South Shore 44-ride fares.

Exam. Fuller: You didn't show the Illinois Central 44-ride rates, Mr. Pain? The 44-ride restricted ticket?

The Witness: No, we did not.

By Mr. Merrill:

Q. Were these graphs constructed on the basis of tariff published rates, Mr. Pain?

A. Yes.

Q. Under your direct supervision?

A. That is correct.

Q. And, do the graphs truly and correctly reflect the comparative rates as they purport to show?

A. They do.

Mr. Merrill: I tender this exhibit, Mr. Examiner, and qualify the purpose for the tendering as follows: There is no contention by the railroad, in submitting these exhibits that the traffic conditions or the operating conditions on the railroads with which they are compared are closely alike or similar. The Milwaukee Road recognizes that the two railroads with which the comparisons are made are operated by electricity and are completely electrified, whereas the Milwaukee Railroad is a diesel operation. The purpose of the exhibit, therefore, is to show what the [fol. 489] suburban traffic can reasonably be called upon to bear in the way of a cost per one-way, round trip, ten-ride, twenty-five ride and restricted monthly tickets. It is offered solely for that purpose.

Exam. Fuller: May it also be agreed that we may also refer to the decision in the Illinois Central case that gives a comparison with the monthly fare also?

Mr. Merrill: Yes, sir. With that qualification the exhibit is tendered.

Exam. Fuller: Any questions?

Mr. Guthrie: Just one second.

Cross examination.

By Mr. Guthrie:

Q. The Illinois Central is a frequent stop urban line, isn't it?

Mr. Merrill: I submitted this with the qualification there was no attempt to show a similar operation. I think Mr. Guthrie ought to be satisfied with that.

Mr. Guthrie: Very well. No cross-examination.

Exam. Fuller: Very well.

Mr. Merrill: That is all.

Exam. Fuller: Exhibit 35 will be received.

(Petitioner's Exhibit No. 35, Witness Pain, was received in evidence.)

Mr. Guthrie: I object on the ground it is immaterial. There is no similarity at all between the services.

(Witness excused.)

[fol. 490] Exam. Fuller: Call your next witness.

Mr. Merrill: Mr. Stephenson?

R. S. Stephenson having been previously duly sworn, resumed the stand, and testified, in rebuttal, as follows:

Direct examination.

By Mr. Merrill:

Q. Please state your name.

A. R. S. Stephenson.

Mr. Merrill: Mr. Examiner, Mr. Stephenson, has a prepared statement to read in rebuttal, which will expidite things to have read rather than to proceed by question and a swer, and with the Examiner's leave we will distribute the statement and let him proceed to read it into the record.

Exam. Fuller: Very well.

By Mr. Merrill:

Q. You have previously testified in this proceeding?

A. I have.

Q. Have you prepared a rebuttal statement to read at this time?

A. I have.

Q. Will you proceed to read that statement?

A. The major points of difference between the respective exhibits of the Milwaukee Railroad and protestant are in three categories:

1. Costs attributable to the use of Chicago Union Station for the Milwaukee Road's suburban service.

2. Expenses of suburban operations exclusive of Chicago [fol. 491] Union Station costs.

3. Allowance for the transportation of non-suburban employees.

As to the first point of difference, the petitioner's position is that the out-of-pocket expenses attributable to the use of Chicago Union Station by its suburban service is the amount of reduction in its payments to Chicago Union Station Company if no suburban service was conducted into that station. This amount is readily determinable and, for this reason, no recourse to any elaborate formula is necessary or proper. Such reduction for the year 1954 is set out in Exhibit 14 as $305,529.92.

The protestant's proposed allowance for the use of Chicago Union Station is set out in Exhibit 24, the corrected total amount being $39,650 plus payroll taxes of $4,812, appearing in Exhibit 33, a total of $44,462.

Protestant's Exhibit 24 follows the pattern of Exhibit 30, introduced by A. B. Olson, Auditor, Chicago Union Station Company, in Illinois Commerce Commission Docket No. 40486. In connection therewith, Auditor Olson also introduced Exhibit 29, which was an apportionment of investment, interest and taxes to suburban service, both exhibits being for the period January 1, 1952, to June 30, 1952, inclusive. The Milwaukee's proportion of such expenses for the six months' period was $75,374, or at the annual rate of $150,748.

The origin of the formula used by witness Olson was [fol. 492] explained in my testimony in Illinois Commerce Commission Docket No. 40486, part of which has been read into this record by Mr. Guthrie, attorney for the protestant. I quote from testimony of C. E. Oliphant, Chief Statistician of the Milwaukee Railroad in Interstate Commerce Commission Docket No. 28974, as follows:

"There is a concept there of the station that would be adequate to handle suburban business and the interest and taxes on that and other things we think run both in an out-of-pocket as well as a fully distributed cost basis. It is as if we could separate a piece of the Union Station and show that as wholly used by the suburban service."

In my testimony not read into the record by Attorney Guthrie, I stated that the use of this formula understates the out-of-pocket Union Station expenses directly attributable to our suburban service and of which we would be relieved if there was no service.

The formula used in Exhibits 29 and 30 by Auditor Olson consisted of two parts, one part of which, dealing with interest and taxes, the protestant has discarded entirely, even though in his concept of the station that would be adequate to handle suburban business witness Oliphant in Docket 28974 stated that the interest and taxes runs both in an out-of-pocket as well as a fully distributed cost basis. The concept of a separate station for suburban service, free from taxes and carrying costs of the investment, is not tenable. The amount of Union Station operating expenses [fol. 493] for suburban service, attributable to Milwaukee Railroad on the basis used by Auditor Olson in the prior case, is stated as $78,536 for the year 1954 in Exhibit 24.

From this amount the protestant has eliminated $27,428 of depreciation and $11,459 of head-end expenses on the stated reason that such items do not constitute out-of-pocket expenses, reducing the total allowance to $39,650. In short, the protestant has so emasculated the Oliphant formula that it would not be recognized by Mr. Oliphant, its author.

The Chicago Union Station area north of the concourse and the north half of the concourse are used almost exclusively by the Milwaukee Railroad's through and suburban train service. The other three railroads use the area south

of the concourse. The use of the station facilities by the Milwaukee Road's suburban trains is approximately one-half of its total use by the Milwaukee Railroad; by suburban cars, about thirty-five per cent of its total use of the station, and the ratio of suburban passengers to total through and suburban passengers using the station is approximately seventy-seven per cent.

The Milwaukee Railroad paid to the Chicago Union Station Company $1,798,302 for through and suburban service in 1954, as shown in Exhibit 14, sheet 9, line 25. Of this amount the protestant would allow $44,462 for the suburban portion, or a little over two per cent. This proposed allowance would only take care of the annual wages of eight [fol. 494] or nine employees of the number needed to provide service over the daily spread of eighteen hours during which suburban trains use the station.

As to the second point of difference, which is the expenses of suburban operations exclusive of Chicago Union Station, there is set out in Petitioner's Exhibit No. 12, comparison of suburban expenses with suburban revenues for the year 1954 on an out-of-pocket basis and on a fully distributed basis, and in Exhibit No. 13 similar comparison of suburban expenses with suburban revenues is made for the four months September to December, 1954, inclusive, when the suburban service was completely dieselized. For the purpose of estimating the amount of suburban expenses on an annual basis, as the suburban service is presently conducted, the petitioner agrees that maintenance of way expenses, as incurred for the year 1954, and as reflected in Exhibit 12, should be considered and that the estimate of all other expenses on an annual basis may be considered as being three times the amount of such expenses appearing in Exhibit No. 13. The estimated annual suburban out-of-pocket expenses on this basis are then:

Maintenance of Way and Structures	$ 93,913
Maintenance of Equipment	647,265
Traffic	3,573
Transportation	1,517,031
General	8,379
Total	$2,270,161

The estimated annual fully distributed suburban expenses [fol. 495] are then:

Maintenance of Way and Structures	$ 330,126
Maintenance of Equipment	672,714
Traffic	3,573
Transportation	1,754,958
General	126,615
Taxes other than payroll	153,780
Total Operating Expenses and Taxes	$3,041,766

In the preparation of Exhibits 12 and 13 the formula developed by the Cost Section of the Bureau of Accounts, Cost Finding and Valuation, Interstate Commerce Commission, designated as Rail-Commutation-1043, was followed closely.

Protestant has introduced Exhibit 30, entitled "Suburban Out-of-Pocket Expenses as Claimed by Petitioner, Eliminating Accounts Petitioner previously Claimed Included No Out-Of-Pocket Expenses." This heading misstates my testimony in Illinois Commerce Commission Docket 40486.

In introducing Exhibit 25, dealing with revenues and expenses on fully distributed basis and on out-of-pocket basis for the first six months of 1952, I called attention to the fact that it is customary in stating expenses on an out-of-pocket basis to apply percentages to fully distributed costs similar to those prescribed in rail formula used by the Interstate Commerce Commission in its Docket 28190, or similar formulas, and that this or a similar formula method [fol. 496] had been followed by our Company in exhibits submitted in other fare cases before that Commission, and further stated that in this exhibit the expenses on an out-of-pocket basis were out to the bare bone, illustrating that of the total maintenance of way and structures expenses on the basis of fully distributed costs shown in this exhibit at $166,593, the only amounts carried over to the out-of-pocket cost colum-s were for repairs to station buildings which were solely used for suburban service, certain other mechanical department facilities, and the relievable expenses of facilities used jointly with other railroads. The relievable expenses were those immediately relievable and did

not include other expenses which over a period of time could be avoided if suburban service were not required. In no case did I say or give the impression that expenses of the latter type were not properly includible in out-of-pocket expenses. I am in full accord with the treatment of such items of expense as set forth in the Cost Section's formula designated as Rail-Commutation-10-43.

Of the maintenance of way and structures expenses protestant has included in Exhibit 30 only the amounts of out-of-pocket expenses shown in Exhibit 12, for Accounts 227, 233, 235, 278 and 279. The net difference between Exhibit 12 and Exhibit 30 in this group of accounts is $71,703.

In computing yearly out-of-pocket costs for other groups of accounts, based upon multiplying amounts stated in Exhibit 13 for the last four months of 1954 by three, protestant [fol. 497] has eliminated other accounts as follows:

Under maintenance of equipment group, protestant has included only Account 311, Other Locomotives—Repairs, and Account 317, Passenger Train Car Repairs. The principal item not included is No. 331, Equipment Depreciation, which totals $194,976 on an annual basis. All other amounts in this group, not recognized by the protestant, aggregate $10,764. Protestant has also eliminated certain accounts in the transportation group which aggregate $8,424 on an annual basis.

In explanation of my failure to include all of the expenses which I consider to be properly includible in Exhibit 25, Illinois Commerce Commission Docket 40486, I wish to repeat what I previously said, that the total out-of-pocket costs as stated in Exhibit 25 were so greatly in excess of revenues for the period plus any revenue increases which might be expected that costs otherwise includible were not so included in that exhibit. A similar omission is to be noted in the present proceeding wherein there has been no showing of return on value. It would have been proper under the Cost Section's suburban formula to include in out-of-pocket costs a return on the value of facilities to meet the needs arising solely because of the existence of suburban service. The diesel locomotives used in suburban service were financed up to 75 per cent or eighty per cent through the issuance of equipment trust certificates. In the

most recent issue of equipment trust certificates, Series TT, [fol. 498] in January, 1955, the effective rate was 2.94 per cent. A return of approximately $93,000 on the investment of $3,166,572 in diesel electric locomotives assigned to suburban service would be reasonably justified.

The third major point of difference concerns the allowance to be accorded suburban service for the transportation of non-suburban employees.

In Protestant's Exhibit 29, computations have been made purporting to show the cash value and cost of transportation furnished to non-revenue passengers apportioned between suburban and non-suburban employees. While certain of the figures were taken from exhibits in Illinois Commerce Commission Docket 40486 and from exhibits in this proceeding, the assumptions made and methods followed have no precedent in either proceeding.

The effect of the calculations made is to assume that non-revenue passengers travel the same average distance and are, therefore, subject to the same fare per ride as revenue passengers. This is not true. See Exhibit 24 in Docket 40486 and Exhibit 11, line 50, in this proceeding.

Further, no allowance was made for the cost of transportation over the petitioner's system to suburban employees, nor to the cost of transportation of material and supplies other than fuel for the suburban service. No allowance was made for less ticket-selling and collection expenses, and less liability for personal injuries than in the case of revenue passengers.

[fol. 499] In Interstate Commerce Commission Docket 30765, Illinois Commerce Commission Docket 38977—the 1950 case—Mr. J. W. Roberts, Transportation Analyst for the Illinois Commerce Commission, developed the non-revenue (non-suburban) portion of the total revenue and nonrevenue passenger miles to be 7.2 per cent. In "Illinois Central Multiple Fares in Chicago Area", 281 ICC 537, 547, it was found that the net credit that should be accorded the suburban service for the transportation of non-suburban employees was $248,271, which was 3.67 per cent of fully distributed operating expenses of $6,770,457. Allowance was made in this determination for the cost of transportation over the petitioner's system to suburban em-

ployees, the cost of transportation of material and supplies for the suburban service, and other reasons such as less ticket selling and collection expense and less liability for personal injuries than in the case of revenue passengers. Of the total suburban passenger miles, 5.6 per cent was represented by the transportation of non-suburban employees.

Using that determination as the basis for estimating the net credit that should be accorded the Milwaukee Road's suburban service for the transportation of non-suburban employees, the percentage of 3.67 would be increased in the ratio as 7.2 is to 5.6, or to 4.72 per cent. Applying 4.72 per cent to fully distributed operating expenses, including Chicago Union Station rent, of $3,924,921 produces $185,256. [fol. 500]. If applied to out-of-pocket expenses, including Chicago Union Station rent, of $2,817,074, the amount is $132,966. These amounts are subject to reduction of 3.2 per cent to eliminate from the total expenses those assignable to head end service.

General Manager O'Toole testified that he had made an investigation of the non-revenue passengers carried on peak trains and on off-peak trains, Transcript, page 12. He stated that, if non-revenue passengers were not carried, a savings of two cars in each direction on the West Line and one car in each direction on the North Line could be made. There would be no saving on off-peak trains.

It is the petitioner's contention that the maximum credit to be allowed to the suburban costs should be the relievable expenses, consisting of a car-mile proportion of passenger car repairs, depreciation, fuel, and train supplies and expenses. The number of car-miles which would be saved annually if non-revenue passengers were eliminated would be 20,232, which is 1.7576 per cent of all suburban car miles. Applying this percent to annual total for the accounts described above, produces a net relievable expense of $17,928, representing the net credit allowable to suburban costs account non-revenue passengers.

Mr. Merrill: May we have a short recess at this time, Mr. Examiner?

Exam. Fuller: We will take a short recess.

(Recess.)

[fol. 501] Exam. Fuller: We will proceed.

Mr. Merrill: I have one additional question as to the position of the railroad in this proceeding just as a summary.

By Mr. Merrill:

Q. Does the railroad seek, in this proceeding, to increase its fares solely in the light of its revenue requirements to meet its out-of-pocket costs?

Mr. Guthrie: I would like to have the question read.

(Question read.)

Mr. Guthrie: I object to the question, and I want to make this statement. In this proceeding under Section 13 of the Interstate Commerce Act, which, as I understand it, applies only where the rates as fixed for intrastate service, as compared with the rates fixed for interstate service, are unfair to interstate service. As a matter of fact, I don't think there is any evidence in this case which so indicates because we haven't had any comparisons. I don't understand— If that isn't the case, I don't understand that the Interstate Commerce Commission is interested as to whether the rates for intrastate service cover the cost or don't cover the cost. The Interstate Commerce Commission is not acting as a court of review for the Illinois Commerce Commission in fixing Illinois rates.

Exam. Fuller: I was going to say, of course, that there are two issues in this case as laid down by the order of investigation for petition; one the question of discrimination between intrastate and interstate and the other is the [fol. 502] question of revenue discrimination, and I don't believe there is anything that this witness can say that can affect the legal proposition. The question on this record is: Has there been unjust discrimination against interstate commerce from a revenue standpoint? I don't see why you don't leave it there.

Mr. Merrill: I would like to withdraw the question, but I would like to make a statement of the position of the railroad at the close of the hearing if I may. The question is withdrawn, sir.

Exam. Fuller: Is that all?
Mr. Merrill: That is all on direct.
Exam. Fuller: Any cross-examination?
Mr. Guthrie: Yes, sir.

Cross examination.

By Mr. Guthrie:

Q. Mr. Stephenson, in your statement, which I have just seen for the first time, you refer to the Exhibits 29 and 30 introduced or identified by Mr. Olson in the 1952 case, do you not?

A. I do.

Q. I call your attention to page 321 of the record in the prior case—and I am talking about Docket No. 40486 before the Illinois Commerce Commission—and I would like to have you take that, if you will—that is page 321.

Mr. Merrill: I don't have that here, Mr. Guthrie. Will you show that to him?

[fol. 503] Mr. Guthrie: I will be glad to. This is the examination of the Witness Olson, with question by Examiner McElroy:

"It shows there $72,495.00 charged against the St. Paul for the use of the Chicago Union Station Company."

The reference, I believe, is to Exhibit 30, if my memory doesn't forsake me.

"My question is, if suburban service is discontinued by the St. Paul Railroad, would this item of $72,495.00 be saved to the Milwaukee Railroad?"

"The Witness: Not all of it because the $72,000 includes some interest on bonds and the taxes which they would probably have to pay anyway."

That was not your testimony, but you were there when that testimony was given, weren't you?

A. Yes, I was there.

Q. And that is correct testimony from that case, is it not? That is a copy.

A. You read it correctly.

Q. Then Examiner McElroy asks:

"Instead of the Milwaukee absorbing all of the suburban service it would absorb a substantial proportion because of its through service and likewise with the Pennsylvania Railroad which would absorb a substantial portion of it because of its through service, since the cost is based on a per car rate."

"The Witness: —That is Mr. Olson— "Well, they would [fol. 504] absorb probably about $36,000 of it only."

That is half of seventy-two thousand.

"That would be fixed, but the other we would eliminate because the Milwaukee uses the north end of the Station exclusively. We could not eliminate a lot of these facilities up there.

"Mr. Guthrie: $72,495 is not wholly an out-of-pocket expense on suburban service, is it?"

Then there was an interposition by Mr. Maguire, who was the attorney for the Milwaukee Railroad, who stated:

"Well, of course, that follows from the witness' testimony. I will concede that without your having to ask the witness. That is a relievable expense. We would not be entirely relieved of it. I will stipulate with you on that."

Now, in your statement that we have eliminated some of the interest and taxes in adjusting the out-of-pocket expense of the Union Station, we did exactly as Mr. Olson testified and as Mr. Maguire conceded in the prior case, didn't we?

A. My statement was that you have not, by the elimination of part of the so-called Oliphant formula, you have gotten away from the concept that Mr. Oliphant had when he was instrumental in developing the formula.

Q. But not away from the concept of the application of that formula as stated by the Witness Olson in the last case. You don't have to answer that. A conclusion can be drawn from what I read to you.

[fol. 505] Mr. Stephenson, Protestant's Exhibit No. 29 relating to non-revenue passengers was prepared on exactly the same basis as the Illinois Commerce Commission Exhibit 43 was prepared, in the Illinois Commerce Commission case, Docket No. 40486, wasn't it?

A. No, sir, it was not.

Q. Well, let us look at it.

A. All right.

Q. That isn't, of course, literally true, but I mean the ascertainment of the division and apportionment to the non-revenue passengers between suburban and non-suburban service?

A. The ascertainment of the percentages as between suburban and non-suburban is the same. The application is entirely different.

Q. Well, in that case,—that is merely the determination of the percentages, isn't it, in that case, in that exhibit that I referred to, Exhibit 43?

A. No, it is not only the development of the percentages. It is their application as well.

Q. Well, what are you referring to? I don't want to cut you off.

A. The percentage applying to the six months' transportation furnished all non-revenue passengers. That isn't the way you have stated it,—that is, the cash value.

Q. Well, let us see if it isn't. Cash value is not stated on this Exhibit 43, is it?

[fol. 506] A. Yes, it is.

Q. Well, I am looking for it.

A. The third from the bottom.

Q. Oh, down here?

A. Yes.

Q. That is from your Exhibit 24 in that case?

A. Yes.

Q. They aren't exactly the same. As a matter of fact, on Exhibit 29 we use the number of revenue passengers carried in 1954 and computed it against the percentage of non-revenue passengers, didn't we, using the 1952 figures?

A. That is a part of your computation.

Q. Yes.

A. That is right.

Q. And divided the percentage up between the same—or, as shown by the same method as shown there below, only we used 89 instead of 77, as revenue passengers?

A. I haven't a copy of your exhibit before me.

Q. In other words, we used a smaller percentage of non-revenue passengers than was used in the 1952 case; isn't that correct, Mr. Stephenson?

Exam. Fuller: Can't all that be checked?

Mr. Guthrie: Well, he is criticizing the figures we used. We took the method actually taken from their exhibit in the last case. It can be checked, but it seems to me that it [fol. 507] should be called attention to on cross-examination. I will not be long on this.

By Mr. Guthrie:

Q. Mr. Stephenson, isn't that correct?

A. I will have to hear the question. It is quite a while ago.

Mr. Guthrie: Will you read the question, Mr. Reporter?

(Question read.)

By Mr. Guthrie:

Q. Well, their revenue passengers, 89.64, compared to the non-revenue passengers, based on your own testimony, would be substantially the same in 1954 as they were in 1952, and since there were more revenue passengers, there was a smaller percentage of non-revenue passengers, wasn't there?

A. I presume so.

Q. Taking Mr. Merrill's figures, and he is about right, because I figured it out, roughly, 19.87 per cent—cross that out. 19.87 miles per non-revenue passenger on the average. Will you put this down, Mr. Stephenson? These are his figures, and 22.82 miles per revenue passenger on the average. 22.82. Actually, that makes a difference of 2.95 miles between the distance of the revenue passenger and the non-revenue passenger, doesn't it, Mr. Stephenson?

A. Yes.

Q. Which gives you a little less than 12 per cent difference in the length of their line, doesn't it; a little less than 13 per cent?

A. I think their calculation is wrong.

[fol. 508] Q. All right. I don't think they are. Will you figure it, Mr. Stephenson?

Exam. Fuller: It can be checked.

Mr. Guthrie: I was thinking it would help you.

The Witness: It is a little less than 15 per cent.

By Mr. Guthrie:

Q. You divided 22.82 into 2.95. What did you use for the divisor?

A. I divided 2.95 by 19.87, which I think is correct.

Q. I think the other is correct. It depends on which figure you use. If your employes engaged in the through service—strike that out.

Mr. Guthrie: I think that is all.

Exam. Fuller: Anything further?

Mr. Merrill: That is all.

Exam. Fuller: What about this information that was to be furnished?

Mr. Merrill: We have the information as requested by the Commission and we will now offer it for the record.

Mr. Guthrie: I suggest we take the items as they are listed here.

Exam. Fuller: Off the record.

(Discussion off the record.)

Exam. Fuller: On the record.

We will mark the request as Exhibit 36.

Mr. Merrill: All right.

[fol. 509] (Petitioner's Exhibit No. 36, Witness Stephenson, was marked for identification.)

Exam. Fuller: And these other documents as Exhibits 37 through 44.

(Petitioner's Exhibits Nos. 37 through 44, Witness Stephenson, were marked for identification.)

Exam. Fuller: Let the record show that at the request of the Bureau of Accounts, Cost Finding and Valuation, the request for information will be received as Exhibit No. 36. That Exhibit 37, consisting of three pages, is in response to Question No. 1. Exhibit 38 is in response to Question No. 2. Exhibit 39 is in response to Question No. 3. Exhibit 40 is in response to Question No. 4. Exhibit 41 is in response to Question No. 5. Exhibit 42 is in response to Question No. 6, and Exhibits 43 and 44 are in response to Question No. 10; Exhibit 43 covering the entire year and Exhibit 44 covering the period September through December, 1954, inclusive.

Off the record.

(Discussion off the record:)

Exam. Fuller: On the record.

Redirect examination.

By Mr. Merrill:

Q. Mr. Stephenson, referring to Exhibit No. 36, will you please state why the railroad has not furnished the items called for by Questions Numbered 7, 8, 9 and 11 through 16, inclusive?

[fol. 510] A. Questions 7, 8 and 9 are in the record in some fashion—

Mr. Guthrie: I would like to have Mr. Stephenson say where and how and what he is referring to as an answer to the questions that they are in the record?

The Witness: I am referring to Questions 7, 8 and 9 of Exhibit 36.

Mr. Guthrie: But where are they in the record. What do you deem to be the answers in the record?

The Witness: They are in the record to the extent they are shown by Protestant's Exhibit No. 24.

Question No. 11, as the record will show—I can't give you the page, but the record will show I stated there was—that I had no evidence there was any substantial change in the number of non-suburban revenue passengers in 1954 from that in 1952.

Question No. 12, as to the furnishing of underlying work sheets, was so voluminous that they have been confined to those that have been requested.

Question No. 13, dealing with the number of head-end cars for all trains using the Chicago Union Station; that is not available as to all head-end cars for the reason that the Chicago Union Station Company does not keep such a record. It would have to be supplied by the tenant lines.

Question No. 14. I testified as to the approximate number of passengers arriving at or leaving from the Chicago Union Station separated as between through passengers [fol. 511] and suburban passengers, this being based on conductor's reports.

Question No. 15 is related to Question No. 11, and I will give the same answer to that.

Question No. 16, the percent car-foot miles of cars in head-end service is also related to Question No. 10, which is covered by Exhibits 43 and 44.

Mr. Guthrie: Mr. Examiner, I understand it has been stated that these Exhibits 36 through 44 were all received in evidence. I assume they are received in evidence as the Milwaukee Road's answers to the questions referred to?

Exam. Fuller: I think the witness ought to testify that they are true and correct?

The Witness: They are true and correct.

Mr. Guthrie: It is perfectly impossible to go in back of all of these. I am perfectly willing they should go in as the Milwaukee Road's answers. I don't mean by that to agree to the theory at all on which the exhibits were made up. I haven't examined them. I want that to be understood.

Exam. Fuller: We understand that. Exhibits 36 to 44 will be received.

(Petitioner's Exhibits 36 to 44, inclusive, Witness Stephenson, were received in evidence.)

Exam. Fuller: Anything further?

Mr. Merrill: May we be off the record for a moment?

Exam. Fuller: Off the record.

[fol. 512] (Discussion off the record.)

Exam. Fuller: On the record. Let the record show that no original briefs will be filed in this case, but proposed report will be issued, and that the matter will be submitted to the entire Commission, with exceptions and response to exceptions to the proposed report.

Do the parties have any final statements they would like to make?

Mr. Merrill: I have no summary to make, sir, of what we have presented except that our points of difference are clearly set forth in Mr. Stephenson's rebuttal testimony, and I think that that testimony bears careful scrutiny by the Commission.

I would like to make clear one point, and that is in our petition we set forth proposed fares. It is our position that

those fares will not recover for the railroad its out-of-pocket costs. There is, however, no dispute among the parties here that they would in any wise recover fully distributed costs, whether as computed by the petitioner or by the protestants. Therefore, we submit that regardless of the findings as to the out-of-pocket costs that the fares proposed by the petitioner are just and reasonable; are fares that the traffic can reasonably bear and are necessary for the proper operation of the petitioner's business.

Mr. Guthrie: If the Examiner please, I am not going to sum up the evidence here either, but I would like to point [fol. 513] out, however, that in our treatment of costs in the evidence, we have, to a very large degree, followed the very method followed by the petitioner, the railroad, in other cases, the only exception possibly being they did depart from that at the tail-end of the 1952 case when they withdrew their original Union Station exhibits and substituted the exhibit on the present basis, the contract basis, which the Illinois Commerce Commission held to be untenable, and I believe I have stated the reasons for that, which I think are sound, and I have stated them before in the course of this proceeding.

Obviously, by contract, which the suburban lines agreed to pay for a part of the service, and they don't thereby have a right to have that considered in the fixing of suburban rates.

There has been a lot said here about non-revenue passengers. Actually it is a contribution to the through service; the only ones we allocated, the only ones we credited were those that were carried to through service, and through service should bear its proportionate part of the expense. If there was any suburban service, by the way, they would have to pay their way, or else be carried on through trains or something would have to be done. That is sound and has been used, as far as I know, in every rate case, in determining rates.

But let us get down to the theoretical basis of this proceeding:

Exhibit 13, as you know—Section 13, as you know better than I, acts merely as a protection against the imposition

[fol. 514] of an undue burden because of the fixing of intrastate rates. There is not any evidence here in this record at all of what the interstate rates are other than what I put in today, and nothing to show that there is anything that the suburban service is unduly holding against the road as compared to the through service. There is not one bit of evidence in the record. This is not a court of review over the intrastate rates as fixed by the state Commerce Commission. When the 1952 case was decided, and when the Illinois Commerce Commission passed on the rates in that case, admittedly the revenues were less and the expenses were more, quite considerably. Every change has been in favor of this operation, and if you will apply, or if you will look at the order of the Illinois Commerce Commission, and apply the adjustments we have made for changed conditions, I think you will find our figures are nearly exactly right. The rate was fixed on the basis of an expense which approached the net income. I will put it that way, which was in the neighborhood of $900,000 less in 1952 than it is now, on the last, on the basis of the last few months since they have been fully dieselized. Unless it is shown by the evidence that there is some burden thrown on interstate commerce, there is no ground for the Interstate Commerce Commission to move in and fix other or different rates, and apply the cash fares on that ground. As I read the statute, and the cases interpreting the statute, with which I know you are familiar, I believe that is so. [fol. 515] Now, the railroad has taken this system of accounting here to try to raise their out-of-pocket costs. Well, if they want their rates fixed under this system of accounting, I think they should have gone to the Illinois Commerce Commission for that purpose. They have never presented this system of accounting, or any other changed conditions to the Illinois Commerce Commission for consideration. I appreciate there is one station across the Wisconsin line here, but the amount of traffic that station takes is negligible. This is primarily an intrastate suburban service, and I think that that should be considered by the Examiner in his proposed report, and by the Commission in adopting it. I submit that nothing here has been shown to show an unreasonable—burden is not quite the word—discrimi-

nation is the word I am looking for, against interstate commerce, and that the petition here for revision of rates should be denied.

Mr. Gibbons: Mr. Examiner, I just want to make a very brief statement. I concur in the remarks of Mr. Guthrie with regard to this case, and especially to the fact that there has been no evidence in the record which would show an undue or unjust discrimination or disadvantage against interstate commerce. That is all I have to say.

Exam. Fuller: I want to make it clear, in entertaining a petition of this kind, that it is in no sense a criticism of the State Commission, but simply that we have under our law certain authority to investigate whether these are [fol. 516] unlawful, and, as you say, that doesn't mean we are reversing the state decisions and in any way saying they are wrong under the law. They are two separate statutes, and each has its own duties to perform.

Have you any reply to that?

Mr. Merrill: Mr. Guthrie stated, towards the end of his argument, that we have come in here with a brand new system of accounting that we never used before, although I think in the earlier part of his argument, he recognized it was apparent they did follow the same theory with respect to the Chicago Union Station expense before the Illinois Commerce Commission as we have followed in this case; in other words, strictly relievable expense were used in both cases, and which accounts for approximately half of our loss. The other matter is that our testimony here establishes a loss from suburban operations. It also establishes that there is only one branch of our service which is profitable and requires no further argument than to the extent that by losing on one service and to subsidize it by another is placing an undue burden and discrimination against the other service by so doing.

Thank you, sir.

Exam. Fuller: The hearing is closed, and I thank you gentlemen for your cooperation.

(Whereupon, at 1:40 o'clock p. m., Monday, May 23, 1955, the hearing in the above-entitled matter was closed.)

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY Witness O'Toole

[fol. 518]

Exhibit No. 7

TRACKAGE USED IN SUBURBAN SERVICE - DECEMBER 31, 1954

	Train District	Miles of Track						Distance From Union Station to End of Each District
		First Main Track	Other Main Tracks	Crossovers and Passing Trks.	Yard Switching Tracks	Way Switching Tracks	Total	
		(All Trackage is Jointly Used by Suburban and Through Trains)						
1	Chicago Union Station Company: Union Station - Canal Street	Used but not owned						0.62
	CMStP&P-Penn. Jointly Owned 50% each:							
2	Canal Street - Western Avenue	2.32	4.11	0.25			6.68	2.94
	CMStP&P Solely Owned:							
3	Western Avenue - Pacific Jct.	2.61	5.16	0.78	14.76		23.31	5.55
4	Pacific Jct. - Deerfield	18.86	18.86	0.65		0.79	39.16	24.41
5	Deerfield - Rondout	8.03	8.03	1.19			17.25	32.44
6	Rondout - Fox Lake	17.23		3.36		1.53	22.12	49.67
7	Fox Lake - Walworth, Wis.	23.99		3.02		0.20	27.21	73.66
8	Pacific Jct. - Bensenville(Church St)	12.33	12.52	0.63		0.85	26.33	17.88
9	Bensenville(Church St.)-Elgin	18.99	18.76	2.21	1.25	0.45	41.66	36.87
	Total	104.36	67.44	12.09	16.01	3.82	203.72	

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

SOUTHBOUND

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

Subject to change without notice.

WEEK-DAY TRAINS

	130	132	32 Ex. Sat.	134 Ex. Sat.	142 Sat. only	136 Ex. Sat.	48 Ex. Sat.	138 Ex. Sat.	146	140	22 B	150 Sat. only	144 Ex. Sat.	152 Ex. Sat. B	148 Sat. only	46	44 Ex. Sat.	118 B	156
									AM		AM					MILWAUKEE-CHICAGO TRAIN		PM	
									6.55		8.30							6.24	
									f 7.04										
									f 7.18										
	AM	AM		AM	AM	AM		AM	f 7.22	AM		AM	AM	PM	PM				PM
	5.07	5.25		6.30	6.35	6.44		7.08	7.28	8.02		11.20	11.40	1.45	3.05			e 6.53	9.20
	5.10	5.29		6.34	6.39			7.12		8.05		11.23	11.43	1.49	3.08				9.23
	5.12	5.32		o 6.37	o 6.42			7.15		o 8.07		f 11.25	a 11.45	o 1.51	o 3.10				o 9.25
	5.15	5.35		6.40	6.45			7.18		8.10		11.28	11.48	1.54	3.12				9.28
	5.20	5.40			6.50	6.53			7.36	8.14		11.32	11.52	1.58	3.16				9.33
	5.25	5.47		6.48	6.55			7.25	k 7.40	8.20		11.37	11.57	2.03	3.21				9.38
	5.33	5.56			7.03	7.06		7.33	k 7.47	8.26		11.44	12.05	2.12	3.29				9.46
	f 5.39	6.02		7.03	7.09					f 8.31		11.50	12.11	2.18					f 9.52
	5.44	6.09	AM	7.09	7.15		AM	7.45		8.38		f 11.56	f 12.17	f 2.24	3.40	PM	PM		f 9.57
	5.50	6.16	6.40		7.20	7.21	7.24		8.00	8.46		12.02	12.23	2.30	3.45		6.00		10.03
	5.55	6.21	6.46	7.19	7.25		7.29	7.55	k 8.04	8.51		12.07	12.28	2.37	3.49		6.06		10.07
	5.57	6.24	6.49		f 7.28		7.32			8.53		12.09	12.30	2.39	f 3.51		6.09		f 10.09
	6.02	6.28	6.55		7.32	7.33	7.37	8.02	k 8.08	8.58		12.13	12.34	2.44	3.55	4.58	6.13		10.13
	6.05	f 6.33	f 6.59	7.25	7.35		7.41			f 9.01		12.16	12.37	2.47	3.58		f 6.16		10.15
	6.09	6.37	7.03		7.39	7.40	7.45		8.12	9.06		12.20	12.41	2.54	4.02		6.20		10.18
	6.14	6.44	7.09		7.43	7.46		8.10		9.11		12.25	12.46	3.00	4.07		f 6.27		10.22
	6.17	6.47	7.12	7.34	7.46		7.51			9.15		12.28	12.49	3.04	4.10		f 6.31		10.25
	6.20	6.52	7.16	7.39	7.49		7.55			9.18		12.31	12.52	3.06	4.13		f 6.34		10.28
	6.23	6.54	7.19	7.43	7.51		7.59			9.20		12.33	12.54	3.10	4.15		f 6.37		10.32
	6.28	6.59	7.23	7.47	7.55	7.56	8.04	8.20	8.27	9.24		12.38	12.59	3.14	4.19		f 6.43		10.37
	6.35	7.05	7.31	7.55	8.04	8.04	8.12	8.26	8.32	9.30		12.45	1.05	3.20	4.25		6.55		10.45
	6.45	7.15	7.41	8.05	8.14	8.14	8.22	8.36	8.42	9.40	9.55	12.55	1.15	3.30	4.35	5.25	7.05	7.50	10.55
	AM	AM	AM	AM	AM	AM	AM	AM	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM

THE VARSITY

To avoid possible crowding and delay at Union Station ticket windows please purchase tickets at your Home Station or the Consolidated Ticket Offices, 179 W. Jackson Blvd. (Insurance Exchange Bldg.)

SUNDAY TRAINS

Miles		142	22 B	150	148	46	154	118 B	158
			AM			MILWAUKEE-CHICAGO TRAIN		PM	PM
0	Lv... WALWORTH (Lake Geneva) ...Lv		8.30					6.24	7.35
6.1	Zenda								f 7.45
17.7	Solon Mills ⊗								f 8.05
19.8	Spring Grove	AM		AM	PM		PM		8.09
24.0	**FOX LAKE**	6.35		11.20	3.05		5.20		8.18
25.7	Ingleside	6.39		11.23	3.08		5.24		8.23
26.8	Wilson Road ⊗	o 6.42		f 11.25	a 3.10		o 5.26		o 8.26
27.5	Long Lake ⊗	6.45		11.28	3.12		5.29		8.29
29.5	Round Lake	6.50		11.32	3.16		5.34		8.34
32.5	Grays Lake	6.55		11.37	3.21		5.39		8.41
38.0	Libertyville	7.0		11.44	3.29		5.46		8.51
41.2	Rondout	7.09		11.50			5.52		9.00
45.5	West Lake Forest ⊗	7.15		f 11.56	3.40	PM	f 5.58		f 9.05
49.6	**DEERFIELD**	7.20		12.02	3.45		6.05		9.12
52.6	Northbrook	7.26		12.07	3.49		6.10		9.17
53.2	Techny ⊗	f 7.28		12.09	f 3.51		6.13		9.19
56.1	Glenview	7.32		12.13	3.55	4.58	6.19		9.24
57.2	Golf ⊗	7.35		12.16	3.58		6.22		9.27
59.2	Morton Grove	7.39		12.20	4.02		6.28		9.33
62.2	Edgebrook (Devon & Central) ⊗	7.43		12.25	4.07		6.30		9.38
63.3	Forest Glen (Elston & Le Claire)	7.46		12.28	4.10		6.33		9.41
64.5	Mayfair (Montrose & Cicero) ⊗	7.49		12.31	4.13		6.36		9.45
65.3	Grayland (Milwaukee & Kilbourn) ⊗	7.51		12.33	4.15		6.40		9.48
67.1	Healy (Fullerton & Pulaski)	7.55		12.38	4.19		6.43		9.53
70.4	Western Ave. (near Grand)	8.04		12.45	4.25		6.50		10.00
73.5	Ar .... **UNION STATION** .... Ar	8.14	9.55	12.55	4.35	5.25	7.00	7.50	10.10
	Canal, Adams Sts. and Jackson Blvd.	AM	AM	PM	PM	PM	PM	PM	PM

THE VARSITY

SMOKERS! One car in each train has been assigned for those who desire to smoke.

CLEAN SEAT! Consider your fellow travelers, please keep your feet off seats.

EXPLANATION OF REFERENCE MARKS ON PAGES 6, 7, 8

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b—Indicates train carries baggage to or from all stations.
e—Stops daily except Sundays and Legal Holidays.
f—Stops on signal to take or leave passengers.
k—Stops Saturdays only, to take revenue passengers.
⊗—No agent at this Station.
Light numerals indicate a. m. **Dark numerals indicate p. m.**

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Parlor Car in train 46.
Cafe Parlor Car—Dining Car Service in trains 22 and 118.
Coaches in all trains.

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Western Avenue	Artesian Ave. and Hubbard St.	BR 8-7900 or ME 7-4100
Healy	Fullerton Ave. and Pulaski Road	ME 7-4100
Grayland	Milwaukee and Kilbourn Aves.	SP 7-2524
Mayfair	Montrose and Cicero Aves.	SP 7-2524
Forest Glen	Elston and Le Claire Aves.	KI 5-7436
Edgebrook	Devon and Central Aves.	ME 7-4100

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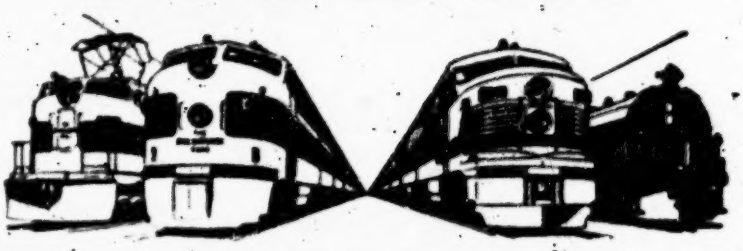

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INGLESIDE
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WALWORTH

THE MILWAUKEE ROAD

OUT IN FRONT!

THE MILWAUKEE ROAD

Route of the Super Dome Hiawathas

[fol. 521]

EXHIBIT 4

WITNESS O'Toole

(P. 345)

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

NORTHBOUND

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

Subject to change without notice.

WEEK-DAY TRAINS

	147	133 Sat. only	135 Ex. Sat. B	27	117 B	145	149 Sat. only	137	143 Ex. Sat. B	155 Ex. Sat.	39 Ex. Sat.	139 Ex. Sat.	53 Ex. Sat.	159 Sat. only	141 Ex. Sat.	35 Ex. Sat.	131	11 B	151	147
	AM	AM	AM	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	AM
	12.20	8.13	8.15	8.55	9.30	11.45	1.21	3.45	4.40	4.46	4.53	5.15	5.18	5.30	5.43	5.48	6.47	9.30	9.33	12.20
	12.28	8.21	8.23	.....	.....	11.53	1.29	3.53		4.56	5.01	5.23	5.26	5.38	5.51	5.56	6.55	.....	9.41	12.28
	12.35	8.27	8.29	.....	.....	11.59	1.36	4.00	4.53	5.02	5.08	5.30	5.34	5.45	5.58	6.03	7.01	.....	9.48	12.35
	12.37	8.29	8.31	.....	.....	12.02	1.39	4.03	.....	.....	5.12	.....	5.39	5.48	.....	6.06	7.04	.....	9.51	12.37
	12.39	8.31	8.33	.....	.....	12.04	1.42	4.05	.....	.....	5.15	.....	5.42	5.51	.....	6.10	7.06	.....	9.53	12.39
	12.42	8.34	8.36	.....	.....	12.07	1.45	4.09	.....	.....	5.18	.....	5.44	5.54	e6.05	6.13	7.09	.....	9.56	12.42
	12.45	8.37	8.39	.....	.....	12.10	1.48	4.12	.....	.....	5.22	.....	5.50	5.57	.....	6.16	7.12	.....	9.59	12.45
	12.50	8.41	8.44	.....	.....	12.15	1.52	4.16	.....	.....	5.27	.....	5.54	6.02	.....	6.20	7.18	.....	10.04	12.50
f	12.53	8.44	8.47	.....	.....	12.18	1.57	4.19	.....	.....	5.32	.....	6.01	6.05	.....	6.23	7.22	.....	10.07	12.53
	12.56	8.47	8.53	9.15	.....	12.21	2.00	4.22	.....	5.17	5.36	5.45	6.04	6.08	6.14	6.26	7.26	.....	10.10	12.56
f	1.01	8.52	8.57	.....	.....	12.25	2.05	4.28	.....	.....	o5.40	.....	.....	6.12	f 6.19	.....	7.31	.....	10.15	f 1.01
	1.04	8.55	9.02	.....	.....	12.28	2.08	4.31	.....	.....	5.44	5.54	6.13	6.15	6.22	6.33	7.34	.....	10.17	1.04
	1.09	9.00	9.09	.....	.....	12.33	2.16	4.36	.....	.....	5.50	6.00	6.20	6.21	6.28	6.41	7.37	.....	10.22	1.09
f	1.14	f 9.06	f 9.16	.....	.....	f 12.39	2.22	f 4.43	.....	.....	PM	6.06	PM	f 6.27	o6.34	PM	7.44	.....	o10.28	f 1.14
f	1.20	f 9.12	9.25	.....	.....	f 12.46	f 2.30	f 4.50	.....	.....	.....	c6.12	.....	.....	o6.41	.....	7.51	.....	f 1.20	f 1.20
	1.25	9.23	9.31	.....	.....	12.51	2.35	4.56	.....	5.39	.....	6.18	.....	6.39	6.47	.....	7.56	.....	10.42	1.25
	1.33	9.30	9.45	.....	.....	12.58	2.44	5.04	.....	5.51	.....	6.26	.....	6.47	6.55	.....	8.04	.....	10.51	1.33
	1.38	9.35	9.55	.....	.....	1.03	2.50	5.09	5.34	5.58	.....	6.32	.....	7.00	7.00	.....	8.09	.....	10.56	1.38
	1.42	9.38	9.59	.....	.....	1.06	2.55	5.13	.....	5.59	.....	6.37	.....	7.05	f 7.09	.....	8.14	.....	11.01	1.42
o	1.44	o 9.40	10.02	.....	.....	o 1.08	o 2.58	5.16	.....	o6.02	.....	o6.40	.....	o 7.08	o7.12	.....	o 8.17	.....	o11.04	o 1.44
	1.46	9.44	10.05	.....	.....	1.11	3.01	5.18	.....	6.06	.....	6.44	.....	7.12	7.15	.....	8.20	.....	11.06	1.46
	1.50	9.53	10.15	.....	d10.19	1.20	3.05	5.25	5.42	6.10	.....	6.53	.....	7.18	7.23	.....	8.32	.....	11.13	1.50
	AM	AM	AM	.....	.....	PM	PM	PM	f 5.48	PM	.....	PM	.....	f 7.23	PM	.....	PM	.....	PM	AM
				.....	.....	.....	.....	.....	f 5.51	.....	.....	.....	.....	f 7.26	.....	.....	.....	.....	.....	.....
				.....	.....	.....	.....	.....	f 6.05	.....	.....	.....	.....	f 7.40	.....	.....	.....	.....	.....	.....
				.....	10.48	.....	.....	.....	6.17	.....	.....	.....	.....	7.50	.....	.....	.....	10.53	.....	.....
				AM	AM				PM					PM				PM		

THE VARSITY — CHICAGO-MILWAUKEE TRAIN — THE SIOUX

To avoid possible crowding and delay at Union Station ticket windows please purchase tickets at your Home Station or the Consolidated Ticket Offices, 179 W. Jackson Blvd. (Insurance Exchange Bldg.)

Miles	Canal, Adams Sts. and Jackson Blvd	147	133	27	117 B	113	153	11 B	151	147
		AM	AM	AM	AM	AM	PM	PM	PM	AM
0	Lv ..... **UNION STATION** Lv	12.20	8.13	8.55	9.30	11.55	5.45	9.30	9.33	12.20
3.1	..... Western Ave. (near Grand)	12.28	8.21	.....	.....	12.05	5.53	.....	9.41	12.28
6.4	..... Healy (Fullerton & Pulaski)	12.35	8.27	.....	.....	12.12	5.58	.....	9.48	12.35
8.2	..... Grayland (Milwaukee & Kilbourn) ⊗	12.37	8.29	.....	.....	12.15	6.01	.....	9.51	12.37
9.0	..... Mayfair (Montrose & Cicero) ⊗	12.39	8.31	.....	.....	12.18	6.03	.....	9.53	12.39
10.2	..... Forest Glen (Elston & Le Claire)	12.42	8.34	.....	.....	12.21	6.06	.....	9.56	12.42
11.3	..... Edgebrook (Devon & Central) ⊗	12.45	8.37	.....	.....	12.24	6.09	.....	9.59	12.45
14.3	..... Morton Grove	12.50	8.41	.....	.....	12.29	6.14	.....	10.04	12.50
16.2	..... Golf ⊗	f 12.53	8.44	.....	.....	12.33	o 6.18	.....	10.07	f 12.53
17.4	..... Glenview	12.56	8.47	9.15	.....	12.36	6.21	.....	10.10	12.56
20.3	..... Techny ⊗	f 1.01	8.52	.....	.....	12.40	o 6.25	.....	10.15	f 1.01
20.9	..... Northbrook	1.04	8.55	.....	.....	12.43	6.28	.....	10.17	1.04
23.9	..... **DEERFIELD**	1.09	9.00	.....	.....	12.48	6.33	.....	10.22	1.09
28.0	..... West Lake Forest ⊗	f 1.14	f 9.06	.....	.....	f 12.54	o 6.39	.....	o10.28	f 1.14
32.3	..... Rondout	f 1.20	f 9.12	.....	.....	f 1.00	6.45	.....	f	f 1.20
35.5	..... Libertyville	1.25	9.23	.....	.....	1.06	6.51	.....	10.42	1.25
41.0	..... Grays Lake	1.33	9.30	.....	.....	1.14	7.03	.....	10.51	1.33
44.0	..... Round Lake	1.38	9.35	.....	.....	1.19	7.07	.....	10.56	1.38
46.0	..... Long Lake ⊗	1.42	9.38	.....	.....	1.23	f 7.11	.....	11.01	1.42
46.7	..... Wilson Road ⊗	o 1.44	o 9.40	.....	.....	o 1.26	o 7.13	.....	o11.04	o 1.44
47.8	..... Ingleside	1.46	9.44	.....	.....	1.29	7.15	.....	11.06	1.46
49.5	..... **FOX LAKE**	1.50	9.53	.....	d10.19	1.34	7.25	.....	11.13	1.50
53.7	..... Spring Grove	AM	AM	.....	.....	1.41	PM	.....	PM	AM
55.8	..... Solon Mills ⊗			.....	.....	1.45				
67.4	..... Zenda			.....	.....	2.06				
73.5	Ar ..... **WALWORTH** (Lake Geneva) ..... Ar			AM	10.48 AM	2.20 PM		10.53 PM		

THE VARSITY — CHICAGO-MILWAUKEE TRAIN — THE SIOUX

New HIAWATHA Service
FOR SUBURBANITES
from GLENVIEW
to
St. PAUL—MINNEAPOLIS
NORTHERN WISCONSIN
and
UPPER MICHIGAN

Also additional service to and from MILWAUKEE

Ask your agent for complete details

★ ★ ★

EXPLANATION OF REFERENCE MARKS ON PAGES 2, 3, 4

c—Stops to leave revenue passengers from Chicago or Western Ave.
B—Indicates train carries baggage between all stations.
c—Stops only on flag to leave or take revenue passengers.
d—Stops to leave or take revenue passengers.
e—Stops only on flag to take revenue passengers.
f—Stops on signal to take or leave passengers.
g—Stops only on flag to leave revenue passengers.
⊗—No agent at this Station.
Where time is omitted trains do not stop.
Light numerals indicate a. m. **Dark numerals indicate p. m.**

EQUIPMENT

Cafe Parlor Car—Dining Car Service in trains 27 and 117.
Coaches in all trains.

HOLIDAY TRAIN SERVICE

On New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas trains will be operated on Sunday schedules in the territory covered by this folder.

Passengers should exercise extreme care when boarding or leaving trains.

MIDWEST
Hiawatha

Chicago — Rockford — Dubuque
Cedar Rapids — Des Moines
Omaha — Sioux City — Sioux Falls
Beaver Tail Parlor Car
Dining Car
Reclining Seat Lounge Coaches

October 5 1951

TICKET FARES

For Information Only. Subject to change without notice.

Federal Tax not included

Between CHICAGO and	One Way Coach Fare	Round Trip Coach Fare 6 month Limit	10-Ride Bearer	25-Ride Bearer	12-Ride Weekly Individual	46-Ride Mthly. Individual	Unrestricted Mthly. Individual	
Deerfield	$0.61	$1.10	$ 5.50	$12.65	$4.30	$15.50	$17.20	....
★Edgebrook	.28	.55	2.75	6.30	2.64	10.10	11.30	....
Forest Glen	.27	.50	2.50	5.75	2.40	9.20	10.80	....
Fox Lake	1.25	2.25	11.25	25.85	6.90	24.85	27.60	....
Glenview	.45	.85	4.25	9.75	3.58	12.85	14.30	....
★Golf	.41	.75	3.75	8.60	3.45	12.40	13.80	....
★Greyland	.22	.40	2.00	4.60	2.00	7.35	9.60	....
Grays Lake	1.03	1.90	9.50	21.85	6.00	21.60	24.00	....
Healy	.17	.34	1.55	3.50	1.80	5.50	7.20	....
★Hebron Siding	1.57	2.85	14.25	32.75	8.10	29.20	32.40	....
Ingleside	1.22	2.20	11.00	25.30	6.70	24.15	26.80	....
Libertyville	.90	1.65	8.25	18.95	5.50	19.80	22.00	....
★Long Lake	1.16	2.10	10.50	24.15	6.50	23.40	26.00	....
★Mayfair	.24	.45	2.25	5.15	2.20	8.25	10.20	....
Morton Grove	.36	.65	3.25	7.45	3.20	11.50	12.80	....
Northbrook	.53	1.00	5.00	11.50	4.00	14.40	16.00	....
Rondout	.82	1.50	7.50	17.25	5.10	18.40	20.40	....
Round Lake	1.11	2.00	10.00	23.00	6.30	22.70	25.20	....
★Solon Mills	1.41	2.55	12.75	29.30	7.50	27.00	30.00	....
Spring Grove	1.36	2.45	12.25	28.15	7.30	26.30	29.20	....
★Techny	.52	.95	4.75	10.90	3.90	14.05	15.60	....
Walworth, Wis	1.85	3.35	16.25	37.35	9.30	33.50	37.20	....
Western Ave., Ill.	.15	.30						....
★West Lake Forest	.72	1.30	6.50	14.95	4.70	16.95	18.80	....
★Wilson Road, Ill.	1.19	2.15	10.75	24.70	6.60	23.80	26.40	....
Zenda, Wis	1.70	3.10	15.50	35.65	8.60	31.00	34.40	....

★Commutation tickets may be purchased at Union Station, or at City Ticket Office, 179 W. Jackson Blvd., Chicago.

PURCHASE TICKETS BEFORE BOARDING TRAINS

In accordance with tariffs filed with the Illinois Commerce Commission, an additional fare of 10c is charged when passengers are afforded an opportunity to purchase tickets and fail to do so.

CHILDREN under 5 years of age when accompanied by parent or guardian, will be transported free; 5 years of age and under 12 will be charged one half of the ticket fare for adults; children 12 years and over will be charged adult fare.

No reduction in commutation rate will be made for children of 5 and under 12 years of age.

One ride from a 10- or 25-ride bearer commutation ticket may be accepted for the transportation of two children 5 and under 12 years of age traveling together.

Lost and Found

Don't forget your parcels. Any loss should be reported immediately to General Baggage Department 221 Union Station Bldg., Chicago or inquiry made at South Side Baggage Checking Counter, Union Station—will not be responsible for unchecked articles left in stations or cars.

SHUTTLE BUS SERVICE

available

From and to Union Station

Ask any agent for full particulars

Ask About

FAMILY PLAN FARES

For vacation trips

3-1-55 (10M)

376

EXHIBIT 4

WITNESS O'Toole

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

EASTBOUND

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

Subject to change without notice.

WEEK-DAY TRAINS

204	206 Ex. Sat.	260 Sat. only	210 Ex. Sat.	212 Ex Sat.	214 Ex. Sat.	216	218	220	108 B		226 B	228	242	246 B	250	258
AM	AM	AM	AM	AM	AM	AM		AM	AM		AM	AM	PM	PM	PM	PM
5.00	5.53	6.05	6.20	6.35	6.45	7.05	.....	7.30	e 7.50		9.15	11.15	**1.55**	**4.23**	**6.33**	**9.25**
5.02	5.55	6.07	6.22	6.37	6.47	7.07	.....	7.32	.....		9.17	11.17	**1.57**	**4.25**	**6.35**	**9.27**
.....	.....	.....	.....	.....	.....	.....	.....	f 7.36	.....		f 9.22	11.22	f **2.02**	f **4.30**	**6.41**	f **9.33**
5.11	6.06	6.16	6.31	6.45	.....	7.16	.....	7.39			9.26	11.26	**2.07**	**4.33**	**6.45**	**9.37**
5.14	6.09	6.19	6.34	.....	6.58	k 7.18	.....	g 7.43			9.29	11.29	**2.10**	**4.36**	**6.48**	**9.40**
5.20	6.15	6.25	6.40	6.54	.....	7.25	.....	7.49			9.34	11.35	**2.16**	**4.42**	**6.54**	**9.46**
f 5.23	6.18	6.27	.....	.....	f 7.07	.....	.....	7.52			9.36	11.38	f **2.19**	**4.45**	**6.57**	f **9.49**
5.26	6.22	6.30	6.47	7.00	.....	7.30	.....	7.57			9.40	11.41	**2.22**	**4.48**	**7.00**	**9.52**
5.29	6.26	6.35	6.52	7.04	.....	7.34	AM	8.00			9.44	11.44	**2.26**	**4.51**	**7.03**	f **9.55**
5.32	6.30	6.40	6.57	7.09	7.16	7.39	7.45	8.04			9.50	11.48	**2.30**	**4.55**	**7.09**	**10.00**
5.38	6.37	6.45	7.02	7.14	7.22	.....	7.50	.....			9.56	11.54	**2.36**	**4.59**	**7.15**	**10.08**
5.40	6.39	6.47	7.04	7.17	7.25	.....	7.52	8.11			9.59	11.58	**2.39**	**5.04**	**7.17**	**10.10**
5.44	6.44	6.50	7.07	7.21	7.29	.....	7.55	.....			10.03	**12.01**	**2.42**	**5.10**	**7.20**	**10.14**
5.46	6.47	6.54	7.11	7.24	7.33	.....	7.59	.....			10.06	**12.03**	**2.44**	**5.12**	**7.24**	**10.16**
5.48	6.50	6.57	7.14	7.27	7.36	.....	8.02	.....			10.09	**12.05**	**2.46**	**5.17**	**7.26**	**10.18**
5.49	6.52	6.59	7.16	7.29	7.38	.....	8.04	.....			10.11	**12.07**	f **2.48**	f **5.19** g	**7.27**	f **10.20**
5.51	6.54	7.01	7.18	7.31	7.40	.....	8.07	.....			10.13	**12.09**	**2.50**	**5.20**	**7.29**	f **10.22**
5.54	6.56	7.04	7.21	7.33	7.43	.....	8.09	.....			10.15	**12.11**	**2.52**	**5.24**	f **7.31**	f **10.24**
5.57	6.58	7.07	7.24	7.35	7.46	.....	8.12	.....			10.17	**12.12**	**2.55**	**5.28**	**7.33**	**10.26**
6.01	7.02	7.11	7.28	7.38	7.51	.....	8.15	.....			10.20	**12.15**	**3.00**	**5.33**	**7.35**	**10.29**
6.08	7.07	7.17	7.34	7.46	7.58	8.03	8.20	8.29			10.25	**12.22**	**3.05**	**5.40**	**7.43**	**10.33**
6.18	7.17	7.27	7.44	7.57	8.08	8.11	8.30	8.39	8.50		10.35	**12.32**	**3.15**	**5.50**	**7.53**	**10.45**
AM	AM	AM	AM	AM	AM	AM	AM	AM	AM		AM	PM	PM	PM	PM	PM

The ARROW—SOUTHWEST LIMITED

SMOKERS
One car in each train has been assigned for those who desire to smoke.

CLEAN SEATS
Consider your fellow travelers; please keep your feet off seats.

To avoid possible crowding and delay at Union Station ticket windows please purchase commutation tickets at your Home Station, or the Consolidated Ticket Offices, 179 W. Jackson Blvd. (Insurance Exchange Bldg.)

Miles		
.0	Lv	**ELGIN** Lv
.8		Elgin (National St.) ⊗
4.1		Spaulding
6.7		Bartlett
8.4		Ontarioville
12.4		Roselle
13.8		Medinah ⊗
15.8		Itasca
17.7		Wooddale ⊗
19.6		**BENSENVILLE**
22.8		Mannheim ⊗
23.6		Franklin Park
25.4		River Grove ⊗
26.1		Elmwood Park ⊗
27.3		Mont Clare (Sayre & Medill Aves.)
27.7		Mars ⊗ (Oak Park & Belden Aves.)
28.2		Galewood ⊗ (Narragansett & McLean Aves.)
29.1		Hanson Park ⊗ (Parkside Ave. & Armitage)
29.8		Cragin (Le Claire & Cortland Sts.)
30.9		Hermosa (1800 N. Keeler Ave.)
33.9		Western Ave. (near Grand)
36.8	Ar	**UNION STATION** Ar
		Canal, Adams Sts. and Jackson Blvd

Passengers should exercise extreme care when boarding or leaving trains.

SUNDAY TRAINS

210	108 B		224	228	242	250
AM	AM		AM	AM	PM	PM
6.20	e 7.50		8.15	11.15	**1.55**	**6.33**
6.22	.....		8.17	11.17	**1.57**	**6.35**
.....	.....		8.22	11.22	f **2.02**	**6.41**
6.31			8.26	11.26	**2.07**	**6.45**
6.34			8.29	11.29	**2.10**	**6.48**
6.40			8.36	11.35	**2.16**	**6.54**
6.43			f 8.38	11.38	f **2.19**	**6.57**
6.47			8.41	11.41	**2.22**	**7.00**
6.52			f 8.44	11.44	**2.26**	**7.03**
6.57			8.49	11.48	**2.30**	**7.09**
7.02			8.55	11.54	**2.36**	**7.15**
7.04			8.58	11.58	**2.39**	**7.17**
7.07			9.01	**12.01**	**2.42**	**7.20**
7.11			9.03	**12.03**	**2.44**	**7.24**
7.14			9.05	**12.05**	**2.46**	**7.26**
7.16			9.07	**12.07**	f **2.48** g	**7.27**
7.18			9.09	**12.09**	**2.50**	**7.29**
7.21			9.11	**12.11**	**2.52**	f **7.31**
7.24			9.13	**12.12**	**2.55**	**7.33**
7.28			9.15	**12.15**	**3.00**	**7.35**
7.34			9.20	**12.22**	**3.05**	**7.43**
7.44	8.50		9.30	**12.32**	**3.15**	**7.53**
AM	AM		AM	PM	PM	PM

The ARROW—SOUTHWEST LIMITED

SMOKERS
One car in each train has been assigned for those who desire to smoke.

CHIPPEWA

Hiawatha SERVES

Milwaukee
Plymouth
Green Bay
Crivitz
Wausaukee
Pembine
Iron Mountain

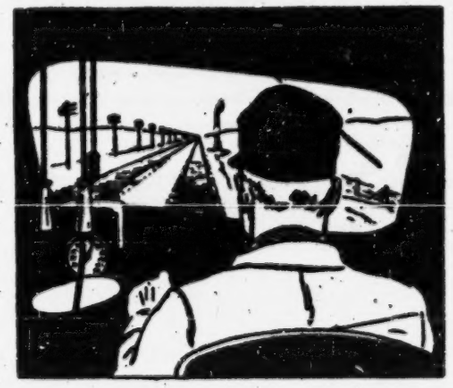
EXPLANATION OF REFERENCE MARKS ON PAGES 6, 7, 8

B—Indicates train carries baggage between all stations.
d—Stops only to take revenue passengers.
e—Stops only to leave revenue passengers from Hampshire.
f—Stops on signal to take or leave passengers.
g—Stops on signal to take passengers for Western Ave. or Chicago.
k—Stops Saturday only.
⊗—No agent at this Station.
Where time is omitted trains do not stop.
Light numerals indicate a.m. **Dark numerals indicate p.m.**

STATIONS WITHIN CITY LIMITS

Stations	Locations	Telephone
City Ticket Office	179 W. Jackson Blvd. (Ins. Exch. Bldg.)	CE 6-7600
Western Avenue	Artesian Ave. and Hubbard St.	BR 8-7900 or ME 7-4100
Hermosa	1800 No. Keeler Avenue	ME 7-4100
Cragin	Le Claire and Cortland	ME 7-4100
Hanson Park	Parkside Ave. and Armitage	ME 7-4100
Galewood	Narragansett and McLean Aves.	ME 7-4100
Mars	Oak Park and Belden Aves.	ME 7-4100
Mont Clare	Sayre and Medill Aves.	ME 7-4100

LET THE ENGINEER DO THE DRIVING!



RIDE *The Hiawathas*

Speed through the miles in air conditioned ease, free from nervous strain and discomfort.

The Twin Cities HIAWATHAS and Olympian HIAWATHA carry America's first full-length dome cars. Super Domes have 68 individual seats on the upper deck, charming Cafe Lounge on the lower deck for refreshments. Everyone is welcome in this car at no extra cost.

Rail fares are low and you have no worries about detours, no bottle-neck blues, no parking problems. If you need a car at your destination, get it through the convenient Rail-Auto service.

We'll be glad to help with your travel plans.

[fol. 522]

EXHIBIT 5

WITNESS O'Toole

CORRECTED TO MARCH 1, 1955

Suburban Service
WEST

Power That Serves The Nation

CHICAGO
HERMOSA
CRAGIN
MONT CLARE
ELMWOOD PARK
RIVER GROVE
FRANKLIN PARK
MANNHEIM
BENSENVILLE
WOODDALE
ITASCA
MEDINAH
ROSELLE
ONTARIOVILLE
BARTLETT
ELGIN

THE MILWAUKEE ROAD

OUT IN FRONT!

THE MILWAUKEE ROAD

Route of the Super Dome Hiawathas

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

WESTBOUND

PLEASE PURCHASE TICKETS BEFORE BOARDING TRAINS

Subject to change without notice.

WEEK-DAY TRAINS

	259	205 B	209	211 B	215 Sat. only	217 Sat. only	221	223	225 Ex. Sat.	227 Ex. Sat.	229 Ex. Sat.	231	233 Ex. Sat.	107 B	283	255 Ex. Sat.	257	259
	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	AM
	12.10	6.30	9.17	12.50	1.15	1.24	3.40	4.30	5.10	5.12	5.21	5.27	5.45	6.10	6.25	7.35	9.15	12.10
	12.18	6.38	9.25	12.58	1.23	1.32	3.48	4.38	5.18	5.20	5.29	5.35	5.53		6.33	7.43	9.23	12.18
	12.24	6.44	9.30	1.04		1.38	3.54	4.44				5.41	5.59		6.39	7.50	9.28	12.24
	12.27	6.46	9.33	1.07		1.41	3.57	4.47				5.45	6.02		6.42	7.53	9.32	12.27
	f 12.29	f 6.47	9.35	1.09		1.43	3.59	4.50				5.47	6.04		6.44	f 7.55	9.34	f 12.29
	f 12.31	6.49	f 9.37	1.11		1.45	4.02	4.53				5.50	6.06		6.46	f 7.57	9.36	f 12.31
	f 12.33	6.51	9.39	1.13		1.47	4.04	4.55				5.53	6.08		6.48	f 7.59	f 9.38	f 12.33
	12.35	6.53	9.41	1.15		1.49	4.06	4.57			5.46	5.56	6.10		6.50	8.01	9.40	12.35
	12.37	6.55	9.43	1.17		1.52	4.08	5.00			5.49	5.59	6.13		6.52	8.03	9.42	12.37
	12.40	6.58	9.46	1.19		1.55	4.11	5.03			5.53	6.03	6.16		6.54	8.06	9.45	12.40
	12.43	7.04	9.50	1.23		1.58	4.15	5.07		5.39	5.55	6.07	6.20		6.58	8.09	9.48	12.43
	12.45	7.07	9.52	1.25		2.00	4.17	5.09			5.59	6.09			7.00	8.11	9.50	12.45
	12.51	7.17	9.58	1.32	1.44	2.05	4.26	5.15		5.47	6.05	6.16	6.26		7.07	8.17	9.56	12.51
	f 12.55	7.21	10.02	f 1.35	1.49	PM	f 4.30	5.19	5.40		PM	6.19	6.30		7.10	8.20	f 9.59	f 12.55
	12.59	7.25	10.06	1.39	1.51		4.33	5.23		5.54		6.23	6.33		7.13	8.24	10.02	12.59
	f 1.02	7.29	f 10.10	1.42	c 1.54		f 4.36	e 5.26		h 5.58		f 6.27			7.17	8.28	10.06	f 1.02
	1.05	7.33	10.14	1.46	1.56		4.39	5.29		6.02		6.30	6.39		7.20	8.31	10.09	1.05
	f 1.12	7.38	f 10.20	1.52	f 2.00		4.45	5.35		6.09		b 6.35	6.44		7.26	f 8.36	10.15	f 1.12
	1.15	7.42	10.23	1.55	2.04		4.49	5.38		6.13		6.39	6.47		7.29	8.39	10.18	1.15
	f 1.19	f 7.46	f 10.27	f 1.59			f 4.53	e 5.42		h 6.18					f 7.33	f 8.43	f10.22	f 1.19
	1.27	8.02	10.34	m 2.07	2.17		5.02	b	6.00	6.27		6.50	6.59		7.42	8.52	10.32	1.27
	1.30	8.05	10.37	2.10	2.20		5.05	5.55	6.03	6.30		6.53	7.02	g	7.45	8.55	10.35	1.30
	AM	AM	AM	PM	PM		PM	PM	PM	PM		PM	PM	PM	PM	PM	AM	AM

The ARROW—SOUTHWEST LIMITED

CLEAN SEATS
Consider your fellow travelers; please keep your feet off seats.

SMOKERS
One car in each train has been assigned for those who desire to smoke.

To avoid possible crowding and delay at Union Station ticket windows please purchase commutation tickets at your Home Station, or the Consolidated Ticket Offices, 179 W. Jackson Blvd. (Insurance Exchange Bldg.)

Miles	Canal, Adams Sts. and Jackson Blvd
.0	Lv. **UNION STATION** Lv
3.1	Western Ave. (near Grand)
6.1	Hermosa (1800 N. Keeler Ave.)
7.2	Cragin (Le Claire & Cortland Sts.)
7.9	Hanson Park ⊗ (Parkside Ave. & Armitage)
8.8	Galewood ⊗ (Narragansett & McLean Aves.)
9.3	Mars ⊗ (Oak Park & Belden Aves.)
9.7	Mont Clare (Sayre & Medill Aves.)
10.4	Elmwood Park ⊗
11.6	River Grove ⊗
13.4	Franklin Park
14.2	Mannheim ⊗
17.4	**BENSENVILLE**
19.3	Wooddale ⊗
21.2	Itasca
23.2	Medinah ⊗
24.6	Roselle
28.6	Ontarioville
30.3	Bartlett
32.9	Spaulding
34.2	Elgin (National St.) ⊗
36.8	Ar. **ELGIN** Ar

Passengers should exercise extreme care when boarding or leaving trains.

SUNDAY TRAINS

259	209	211	231	107 B	257	259
AM	AM	PM	PM	PM	PM	AM
12.10	9.17	12.50	5.27	6.10	9.15	12.10
12.18	9.25	12.58	5.35		9.23	12.18
12 24	9 30	1.04	5.41		9.28	12.24
12.27	9.33	1.07	5.45		9.32	12.27
f 12.29	9.35	1.09	5.47		9.34	f 12.29
f 12.31	f 9 37	1.11	5.50		9.36	f 12.31
f 12 33	9.39	1.13	5.53		f 9.38	f 12.33
12.35	9.41	1.15	5.56		9.40	12.35
12.37	9.43	1.17	5.59		9.42	12.37
12.40	9.46	1.19	6.03		9.45	12.40
12.43	9.50	1.23	6.07		9.48	12.43
12.45	9.52	1.25	6.09		9.50	12.45
12.51	9.58	1.32	6.16		9.56	12.51
f 12.55	10.02	f 1.35	6.19		f 9.59	f 12.55
12.59	10.06	1.39	6.23		10.02	12.59
f 1.02	f 10.10	1.42	f 6.27		10.06	f 1.02
1.05	10.14	1.46	6.30		10.09	1.05
f 1.12	f 10.20	1.52	6.35		10.15	f 1.12
1.15	10.23	1.55	6.39		10.18	1.15
f 1.19	f 10.27	f 1.59	f 6.43		f10.22	f 1.19
1.27	10.34	2.07	6.50		10.32	1.27
1.30	10.37	2.10	6.53	g	10.35	1.30
AM	AM	PM	PM	PM	PM	AM

The ARROW—SOUTHWEST LIMITED

CLEAN SEATS
Consider your fellow travelers; please keep your feet off seats.

No traffic tie-ups . . .
No weather worries . . .
No highway hazards . . .
No parking problems . . .
when you ride
The Milwaukee Road's modern trains
Relax in comfort . . . at low fares

EXPLANATION OF REFERENCE MARKS ON PAGES 2, 3, 4

a—Stops only to take or leave revenue passengers.
B—Indicates train carries baggage between all stations.
b—Stops Saturdays only.
c—Stops to leave passengers from Chicago.
d—Stops to leave revenue passengers from Chicago or Western Ave.
e—Saturday only stops to leave passengers from Chicago or Western Ave., or take for Elgin.
f—Stops on signal to take or leave passengers.
g—Stops only to take passengers for west of Elgin.
h—Stops to leave passengers from Chicago or Western Ave., or take for Elgin.
m—Does not stop on Saturdays.
⊗—No agent at this Station.
Where time is omitted trains do not stop.
Light numerals indicate a.m. **Dark numerals indicate p.m.**

HOLIDAY TRAIN SERVICE

On New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas, trains will be operated on Sunday schedules in the territory covered by this folder.

If It's Travel — We Can Serve You

MIDWEST *Hiawatha*

Chicago — Rockford — Dubuque
Cedar Rapids — Des Moines
Omaha — Sioux City — Sioux Falls

Drawing Room Parlor Car
Dining Car
Reclining Seat Lounge Coaches

September 26, 1954 **TICKET FARES**

For Information Only. Subject to change without notice.

Federal Tax not included

Between CHICAGO and	One Way Coach Fare	Round Trip Coach Fare 6 month Limit	10-Ride Bearer	25-Ride Bearer	12-Ride Weekly Individual	46-Ride Mthly. Individual	Unrestricted Mthly. Individual	
Bartlett	$0.77	$1.40	$7.00	$16.10	$4.90	$17.65	$19.60	.....
Bensenville	.45	.85	4.25	9.75	3.58	12.85	14.30	.....
Cragin	.19	.35	1.75	4.00	1.80	6.40	8.40	.....
Elgin	.94	1.70	8.50	19.55	5.60	20.20	22.40	.....
★Elmwood Park	.27	.50	2.50	5.75	2.40	9.20	10.80	.....
Franklin Park	.35	.65	3.25	7.45	3.08	11.05	12.30	.....
★Galewood	.24	.45	2.25	5.15	2.20	8.25	10.20	.....
★Hanson Park	.22	.40	2.00	4.60	2.00	7.35	9.69	.....
Hermosa	.16	.30	1.50	3.45	1.80	5.50	7.20	.....
Itasca	.53	1.00	5.00	11.50	4.00	14.40	16.00	.....
★Mannheim	.36	.65	3.25	7.45	3.20	11.50	12.80	.....
★Mars	.24	.45	2.25	5.15	2.20	8.25	10.20	.....
Medinah	.59	1.10	5.50	12.65	4.20	15.15	16.80	.....
Mont Clare	.25	.45	2.25	5.15	2.40	9.20	10.80	.....
Ontarioville	.73	1.35	6.75	15.50	4.80	17.30	19.20	.....
★River Grove	.30	.55	2.75	6.30	2.88	10.60	11.80	.....
Roselle	.82	1.15	5.75	13.20	4.40	15.85	17.60	.....
Spaulding	.84	1.55	7.75	17.80	5.20	18.75	20.80	.....
Western Ave	.15	.30						.....
★Wooddale	.49	.90	4.50	10.35	3.80	13.70	15.20	.....

★Commutation tickets may be purchased at Union Station, or at City Ticket Office, 179 W. Jackson Blvd., Chicago.

Purchase Tickets Before Boarding Trains

In accordance with tariffs filed with the Illinois Commerce Commission, an additional fare of 10c is charged when passengers are afforded an opportunity to purchase tickets and fail to do so.

CHILDREN under 5 years of age when accompanied by parent or guardian, will be transported free; 5 years of age and under 12 will be charged one half of the ticket fare for adults; children 12 years and over will be charged adult fare.

No reduction in commutation rate will be made for children of 5 and under 12 years of age.

One ride from a 10- or 25-ride bearer commutation ticket may be accepted for the transportation of two children 5 and under 12 years of age traveling together.

Lost and Found

Don't forget your parcels. Any loss should be reported immediately to General Baggage Department, 221 Union Station Bldg., Chicago, or inquiry made at South Side Baggage Checking Counter. Union Station will not be responsible for unchecked articles left in stations or cars.

SHUTTLE BUS SERVICE
available

From and to Union Station

Ask any agent for full particulars

Ask About

FAMILY PLAN FARES

For vacation trips

EXHIBIT 5

WITNESS O'Toole

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

LOCOMOTIVES IN CHICAGO SUBURBAN SERVICE

Line No.	Serial Number (1)	Power (2)	Manufacturer (3)	Horsepower (4)	Year Built New (5)	Original Cost to 12/31/54 (6)	Amount of Depreciation Accrued to 12/31/54 (7)
1	981	Diesel	Alco	1500	1946	$127,706	$ 49,720
2	2426	"	EMD	1750	1954	169,991	3,471
3	2432	"	"	1750	1954	173,586	3,544
4	2433	"	"	1750	1954	173,586	3,544
5	2434	"	"	1750	1954	173,586	3,544
6	2435	"	"	1750	1954	173,586	3,544
7	9A	"	FM	2000	1947	182,983	68,980
8	10A	"	"	2000	1946	182,976	71,939
9	11A	"	"	2000	1947	182,983	70,460
10	11B	"	"	2000	1947	182,983	69,716
11	12A	"	"	2000	1947	182,983	69,721
12	12B	"	"	2000	1947	182,983	68,980
13	16A	"	EMD	2000	1946	179,435	74,148
14	16B	"	"	2000	1946	179,450	74,146
15	17A	"	"	2000	1946	179,450	74,144
16	17B	"	"	2000	1946	179,435	74,146
17	18A	"	"	2000	1946	179,435	74,147
18	18B	"	"	2000	1946	179,435	74,147
19	Total 18 Locomotives					3,166,572	932,041

When any of the above locomotives are taken out of service for repairs they are replaced by a locomotive from the Western Avenue Diesel Passenger Pool.

AGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

LOCOMOTIVES IN CHICAGO SUBURBAN SERVICE

turer	Horsepower (4)	Year Built New (5)	Original Cost to 12/31/54 (6)	Amount of Depreciation Accrued to 12/31/54 (7)	Amount of Annual Depreciation (8)
	1500	1946	$127,706	$ 49,720	$ 6,258
	1750	1954	169,991	3,471	8,330
	1750	1954	173,586	3,544	8,506
	1750	1954	173,586	3,544	8,506
	1750	1954	173,586	3,544	8,506
	1750	1954	173,586	3,544	8,506
	2000	1947	182,983	68,980	8,966
	2000	1946	182,976	71,939	8,966
	2000	1947	182,983	70,460	8,966
	2000	1947	182,983	69,716	8,966
	2000	1947	182,983	69,721	8,966
	2000	1947	182,983	68,980	8,966
	2000	1946	179,435	74,148	8,792
	2000	1946	179,450	74,146	8,793
	2000	1946	179,450	74,144	8,793
	2000	1946	179,435	74,146	8,792
	2000	1946	179,435	74,147	8,792
	2000	1946	179,435	74,147	8,792
			3,166,572	932,041	155,162

t of service for repairs they are replaced
l Passenger Pool.

[fol. 532]

Exhibit No. 8

Witness: Stephenson

EXHIBIT No. 10

Exhibit No. 10

Witness Stephenson

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT SHOWING NUMBER OF PASSENGERS CARRIED
IN CHICAGO SUBURBAN SERVICE YEARS 1940-1954

Line No. (1)	Year (2)	System Commutation and Multiple Ride Ticket Passengers Note (a) (3)	Chicago Suburban Service		
			Commutation and Multiple Ride Ticket Passengers (4)	One - Way Round - Trip and Cash Fares (5)	Total Passengers (6)
1	1940	2,172,714	2,107,016	(b) 329,959	2,436,975
2	1941	2,455,023	2,385,306	373,539	2,758,845
3	1942	3,049,365	2,953,797	457,248	3,411,045
4	1943	3,368,241	3,183,417	(c) 695,895	3,879,312
5	1944	3,677,257	3,251,645	(c) 710,810	3,962,455
6	1945	3,744,015	3,366,318	(c) 735,877	4,102,195
7	1946	3,754,197	3,650,527	(c) 798,005	4,448,532
8	1947	4,097,654	3,998,676	874,089	4,872,765
9	1948	4,370,610	4,294,557	(d) 664,153	4,958,710
10	1949	4,071,987	3,993,222	(d) 617,552	4,610,774
11	1950	4,020,414	3,957,035	611,943	4,568,978
12	1951	4,186,842	4,111,997	(d) 635,907	4,747,904
13	1952	3,899,249	3,819,900	840,861	4,660,761
14	1953	3,823,231	3,749,146	868,131	4,617,277
15	1954	3,920,824	3,910,526	958,538	4,869,064

(a) Includes commutation passengers in Milwaukee, Wisconsin and Terre Haute, Indiana.

(b) Estimated at same percentage of commutation passengers as for year 1941.

(c) Estimated at same percentage of commutation passengers as for year ended June 30, 1947.

(d) Estimated at same percentage of commutation passengers as for year 1950.

[fol. 536b] EXHIBIT No. 11

Exhibit No. 11

Witness Stephenson

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATISTICS OF SUBURBAN OPERATION IN THE CHICAGO AREA
YEAR 1954

Line No.	Items (a)	Year 1954 (b)
1	1. Route Miles Operated:	
2	(a) Chicago-Elgin	36.87
3	(b) Chicago-Walworth	73.66
4	(c) Total Route Miles	110.53
5	2. Road Miles Used:	
6	(a) Chicago-Pacific Junction	5.55
7	(b) Pacific Junction-Elgin	31.32
8	(c) Pacific Junction-Rondout	26.89
9	(d) Rondout-Walworth	41.22
10	(e) Total Road Miles Used	104.98
11	3. Number of Stations (In addition to Union Station & Western Avenue):	
12	(a) Chicago-Elgin Line	20
13	(b) Chicago-Walworth Line	24
14	(c) Total Number of Stations	44
15	4. Number of Trains Per Day in Both Directions (Excluding Thru Trains):	
16	(a) Chicago-Elgin Line:	
17	(b) Monday thru Friday (Excluding holidays)	28.0
18	(c) Saturdays	22.0
19	(d) Sundays and Holidays	10.0
20	(e) Chicago-Walworth Line:	
21	(f) Monday thru Friday (Excluding holidays)	26.0
22	(g) Saturdays	16.0
23	(h) Sundays and Holidays	10.0
24	(i) Total Number of Trains Per Day	46.3
25	5. Number of Passengers Carried:	
26	(a) Commutation and multiple ride tickets	3,910,526
27	(b) Other Suburban (One Way and Round Trip)	958,538
28	(c) Total Passengers Carried	4,869,064
29	6. Number of Passenger Miles:	
30	(a) Commutation and multiple ride tickets	93,512,421
31	(b) Other Suburban (One Way and Round Trip)	17,610,366
32	(c) Total Passenger Miles	111,122,787
33	7. Train Miles	757,845
34	8. Locomotive Unit Miles	778,262
35	9. Car Miles	3,413,835
36	Averages:	
37	Per Train Mile:	
38	Revenues (Including Mail, Express, etc.)	$ 2.42
39	Operating Expenses and Taxes: Fully Distributed Basis	$ 5.18
40	Out-of-Pocket Basis	$ 3.72
41	Per Car Mile:	
42	Revenue (Including Mail, Express, etc.)	$ .54
43	Per Passenger Mile:	
44	Commutation and multiple ride ticket Passenger Revenue (Per	
45	Commutation Passenger Mile)	$ .0147
46	Other Suburban Passenger Revenue (Per Other Suburban Passenger	
47	Mile)	$ .0240
48	All Suburban Passenger Revenue (Per Suburban Passenger Mile)	$ .0162
49	Per Revenue Passenger:	
50	Average Haul - Miles	22.82
51	Per Train:	
52	Number of cars	4.50
53	Number of Revenue Passengers	147
54	Per Car:	
55	Number of Revenue Passengers	32.55

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Comparison of Suburban Expenses with Suburban Revenues.
Year 1954

Summary Schedule

Line No.	Expense or Revenue Groups (1)	Source (unless otherwise indicated see cols. (3) and (4) for applicable schedule) (2)	Suburban Out-of-pocket expenses, incl. solely related expenses (from Schedule A, column (3)) (3)	Fully distributed suburban expenses (from Schedule B, column (5)) and revenues (4)
	EXPENSES			
1	Maintenance of Way and Structures	Line 40	$ 93,913	$ 330,126
2	Maintenance of Equipment	Line 55	753,375	782,061
3	Traffic	Line 58	2,712	2,712
4	Transportation - rail line	Line 95	1,653,180	1,900,864
5	General	Line 108	8,364	136,484
6	Taxes other than payroll	Line 110	0	153,785
7	Total operating expenses and taxes	Line 111	$ 2,511,544	$ 3,306,032
	REVENUES			
8	Commutation passenger revenue	Revenue Schedule, Line 1(a)	xxx	$ 944,574
9	Multiple ride ticket passenger revenue	Revenue Schedule, Line 1(b)	xxx	429,687
10	Other passenger revenue	Revenue Schedule, Line 1(c)	xxx	421,970
11	Total passenger revenue	Total lines 8, 9 and 10	xxx	1,796,231
12	Other rail-line transportation revenue	Revenue Schedules, total lines 2, 3, 4 and 5	xxx	34,112
13	Incidental revenues	Revenue Schedule, Line 7	xxx	2,909
14	Total suburban revenue	Revenue Schedule, Line 8	xxx	$ 1,833,252

382
[fol. 537]

Exhibit No. 5 A
Witness Stapleton

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Expense Schedule A

Suburban Out-of-Pocket Expenses
Year 1954

Line No.	Account No. (1)	Item (2)	Amount (3)	Derivation of out-of-pocket costs for suburban service (4)
		I. Maintenance of Way and Structures		
1	202	Superintendence	$ 0	No appreciable amount could be eliminated if suburban service were discontinued.
2	202	Roadway maintenance-yard switching tracks	126	(Yard switching tracks. This expense covers only the Western Ave. Passenger Yard in Chicago.
3		-running tracks	2,024	(The average cost per equated track mile was developed for the section gang maintaining the tracks in
4	208	Bridges, trestles and culverts-yard switching tracks	0	(Western Ave. Passenger Yard and multiplied by the equated track miles in Western Ave. Passenger Yard.
5		-running tracks	1,416	(In developing equated track miles, a factor of 1 was used for first main, 0.87 for other main tracks and
6	212	Ties-yard switching tracks	470	(0.5 for all other tracks. The suburban expense was based upon the ratio of suburban cars handled to total
7		-running tracks	2,469	(cars handled in Western Ave. Passenger Yard, giving a weight of 1 to a passenger car and a weight of 2 to
8	214	Rails-yard switching tracks	806	(a locomotive unit. The out-of-pocket expense was based upon the use portion shown on page 31 of the Railroad
9		-running tracks	7,524	(Maintenance Study, Engineering Section of the Bureau of Valuation, I.C.C., dated February 15, 1953.
10	216	Other track material-yard switching tracks	4,018	(
11		-running tracks	12,186	(
12	218	Ballast-yard switching tracks	0	(Running tracks. The average cost per equated track mile was developed for each section gang district in the
13		-running tracks	163	(suburban area and multiplied by the equated track miles used by the suburban trains in such districts. The
14	220	Track laying and surfacing-yard switching tracks	4,403	(equated track miles were developed in the same manner as shown under yard. The suburban expense was based
15		-running tracks	26,073	(upon the ratio of suburban gross ton miles (including locomotives and tenders) to total gross ton miles for
16	221	Fences, snowsheds, and signs-yard switching tracks	0	(all services using such tracks. The out-of-pocket expense was developed in the same manner as shown under yard.
17		-running tracks	157	(
18	227	Station and office buildings	15,405	The actual maintenance expense of stations which could be eliminated if suburban service were discontinued is included. Where a suburban station is jointly used by suburban and other traffic and must be continued in service even though suburban service were discontinued the suburban portion was based upon the use made in suburban service against the total, developed from a special study at each station. The out-of-pocket expense is based upon the use portion shown on page 31 of the Railroad Maintenance Study.
19	229	Roadway buildings	0	None of these buildings could be eliminated if suburban service were discontinued.
20	231	Water stations	1,553	The actual maintenance expense of water stations which could be eliminated if suburban service were discontinued was included. Where water stations could not be eliminated the use portion was included, based upon the ratio of fuel issues in suburban service to the total issues.
21	233	Fuel stations	167	Same as Account 231.
22	235	Shops and enginehouses-(a) Enginehouse portion	2,326	The actual maintenance expense which could be eliminated if suburban service were discontinued was included.
		(b) Shop portion	0	None could be eliminated.
23	247	Communication systems	0	There are no telegraph or telephone lines used exclusively in suburban service.
24	249	Signals and interlockers	0	There are no signal systems or interlockers which could be eliminated if suburban service were discontinued.
25	253	Power plants	0	There are no power plants which could be abandoned if suburban service were discontinued.
26	257	Power-transmission systems	0	There are no power-transmission systems which could be abandoned if suburban service were discontinued.
27	260	Road property-depreciation	0	No depreciable amount.
28	269	Roadway machines	1,602	The passenger charges to this account for the three divisions having Chicago suburban service (Chicago Terminals, Milwaukee and Dubuque & Illinois Divisions) was multiplied by the percentage that suburban charges to accounts 202 to 265 inclusive are of the passenger charges to these accounts for the three divisions.
29	271	Small tools and supplies	1,242	Same as Account 269.
30	272	Removing snow, ice and sand	1,165	Other than yard-same as Accounts 202-221. Yard-The only suburban expense is at Western Ave. Passenger Yard and the total passenger expense to Chicago Terminals Division was multiplied by the ratio of suburban cars handled to total cars handled in Western Ave. Passenger Yard.
31	273	Public improvements-Maintenance	0	None could be eliminated if suburban service were discontinued.
32	274	Injuries to persons	1,538	Same as Account 269.
33	275	Insurance	222	Same as Account 269.
34	276	Stationery and printing	187	Same as Account 269.
35	277	Other expenses	175	Same as Account 269.
36	278	Maintaining joint tracks, yards and other facilities-Dr.	3,768	Actual reduction in payments to Pennsylvania RR. Co., for use of tracks Canal St. to Western Ave., if suburban service were discontinued.
37	279	Maintaining joint tracks, yards and other facilities-Cr.	Cr. 133	Actual reduction in amounts billed the Pennsylvania RR. Co., for expense in connection with use of tracks, Canal St. to Western Ave., if suburban service were discontinued.
38	281	Right-of-way expenses	0	None could be eliminated if suburban service were discontinued.
39		Payroll taxes	2,861	6.75% of the taxable portion of labor.
40		Total Maintenance of Way and Structures	93,913	
		II. Maintenance of Equipment		
41	301	Superintendence	0	No appreciable amount could be eliminated if suburban service were discontinued.
42	302	Shop machinery	877	The passenger charges to this account for the three divisions was multiplied by the percentage that suburban charges to Accounts 308, 311, 317 and 326 were of the passenger charges to these accounts for the three divisions and further multiplied by the use portion.
43	304	Power plant machinery-train operation portion	0	None used.
		-portion not used for train operation.	61	Same as Account 302.

EXHIBIT No. 13A

Exhibit No. 13 A

Witness Lippleson

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Comparison of Suburban Expenses with Suburban Revenues
September to December, 1954, Inclusive

Summary Schedule

Line No.	Expense or Revenue Groups (1)	Source (unless otherwise indicated see cols. (3) and (4) for applicable schedule) (2)	Suburban Out-of-pocket expenses incl. solely related expenses (from Schedule A, column (3)) (3)	Fully distributed suburban expenses (from Schedule B, column (5)) and revenues (4)
	EXPENSES			
1	Maintenance of way and structures	Line 40	$ 38,808	$ 115,643
2	Maintenance of equipment	Line 55	215,755	224,238
3	Traffic	Line 58	1,191	1,191
4	Transportation - rail line	Line 95	505,677	584,986
5	General	Line 108	2,793	42,205
6	Taxes other than payroll	Line 110	0	51,260
7	Total operating expenses and taxes	Line 111	$ 764,224	$ 1,019,523
	REVENUES			
8	Commutation passenger revenue	Revenue Schedule, Line 1(a)	xxx	$ 319,670
9	Multiple ride ticket passenger revenue	Revenue Schedule, Line 1(b)	xxx	143,652
10	Other passenger revenue	Revenue Schedule, Line 1(c)	xxx	144,011
11	Total passenger revenue	Total Lines 8, 9 and 10	xxx	607,333
12	Other rail-line transportation revenue	Revenue Schedules, Total Lines 2, 3, 4 and 5	xxx	13,035
13	Incidental revenues	Revenue Schedule, Line 7	xxx	1,317
14	Total suburban revenue	Revenue Schedule, Line 8	xxx	$ 621,685

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Suburban Out-of-Pocket Expenses
September to December, 1954, Inclusive.

Expense Schedule A

Sheet 1 of 3 Sheets

Line No.	Account No. (1)	Item (2)	Amount (3)	Derivation of out-of-pocket costs for suburban service (4)
		I. Maintenance of Way and Structures		
1	201	Superintendence	0	No appreciable amount could be eliminated if suburban service were discontinued.
2	202	Roadway maintenance-yard switching tracks	45	(Yard switching tracks. This expense covers only the Western Ave. Passenger Yard in Chicago.
3		-running tracks	602	(The average cost per equated track mile was developed for the section gang maintaining the tracks in
4	208	Bridges, trestles and culverts-yard switching tracks	0	(Western Ave. Passenger Yard and multiplied by the equated track miles in Western Ave. Passenger Yard.
5		-running tracks	566	(In developing equated track miles, a factor of 1 was used for first main, 0.87 for other main tracks and
6	212	Ties-yard switching tracks	290	(0.5 for all other tracks. The suburban expense was based upon the ratio of suburban cars handled to total
7		-running tracks	1,188	(cars handled in Western Ave. Passenger Yard, giving a weight of 1 to a passenger car and a weight of 2 to
8	214	Rails-yard switching tracks	74	(a locomotive unit. The out-of-pocket expense was based upon the use portion shown on page 31 of the Railroad
9		-running tracks	6,139	(Maintenance Study, Engineering Section of the Bureau of Valuation, I.C.C., dated February 15, 1953.
10	216	Other track material-yard switching tracks	1,000	(
11		-running tracks	4,391	(
12	218	Ballast-yard switching tracks	0	(Running tracks. The average cost per equated track mile was developed for each section gang district in the
13		-running tracks	10	(suburban area and multiplied by the equated track miles used by the suburban trains in such districts. The
14	220	Track laying and surfacing-yard switching tracks	1,555	(equated track miles were developed in the same manner as shown under yard. The suburban expense was based
15		-running tracks	11,936	(upon the ratio of suburban gross ton miles (including locomotives and tenders) to total gross ton miles for
16	221	Fences, snowsheds, and signs-yard switching tracks	0	(all services using such tracks. The out-of-pocket expense was developed in the same manner as shown under yard.
17		-running tracks	77	(
18	227	Station and office buildings	5,007	The actual maintenance expense of stations which could be eliminated if suburban service were discontinued is included. Where a suburban station is jointly used by suburban and other traffic and must be continued in service even though suburban service were discontinued the suburban portion was based upon the use made in suburban service against the total, developed from a special study at each station. The out-of-pocket expense is based upon the use portion shown on page 31 of the Railroad Maintenance Study.
19	229	Roadway buildings	0	None of these buildings could be eliminated if suburban service were discontinued.
20	231	Water stations	384	The actual maintenance expense of water stations which could be eliminated if suburban service were discontinued was included. Where water stations could not be eliminated the use portion was included, based upon the ratio of fuel issues in suburban service to the total issues.
21	233	Fuel stations	10	Same as Account 231.
22	235	Shops and enginehouses-(a) Enginehouse portion	150	The actual maintenance expense which could be eliminated if suburban service were discontinued was included.
		(b) Shop portion	0	None could be eliminated.
23	237	Communication systems	0	There are no telegraph or telephone lines used exclusively in suburban service.
24	249	Signals and interlockers	0	There are no signal systems or interlockers which could be eliminated if suburban service were discontinued.
25	253	Power plants	0	There are no power plants which could be abandoned if suburban service were discontinued.
26	257	Power-transmission systems	0	There are no power-transmission systems which could be abandoned if suburban service were discontinued.
27	266	Road property-depreciation	0	No depreciable amount.
28	269	Roadway machines	731	The passenger charges to this account for the three divisions having Chicago suburban service (Chicago Terminals, Milwaukee and Dubuque & Illinois Divisions) was multiplied by the percentage that suburban charges to accounts 202 to 265 inclusive are of the passenger charges to these accounts for the three divisions.
29	271	Small tools and supplies	508	Same as Account 269.
30	272	Removing snow, ice and sand	255	Other than yard-same as Accounts 202-221.
				Yard-The only suburban expense is at Western Ave. Passenger Yard and the total passenger expense to Chicago Terminals Division was multiplied by the ratio of suburban cars handled to total cars handled in Western Ave. Passenger Yard.
31	273	Public improvements-Maintenance	0	None could be eliminated if suburban service were discontinued.
32	274	Injuries to persons	383	Same as Account 269.
33	275	Insurance	89	Same as Account 269.
34	276	Stationery and printing	64	Same as Account 269.
35	277	Other expenses	64	Same as Account 269.
36	278	Maintaining joint tracks, yards and other facilities-Dr.	2,075	Actual reduction in payments to Pennsylvania RR. Co., for use of tracks Canal St. to Western Ave., if suburban service were discontinued.
37	279	Maintaining joint tracks, yards and other facilities-Cr.	Cr. 13	Actual reduction in amounts billed the Pennsylvania RR. Co., for expense in connection with use of tracks, Canal St. to Western Ave., if suburban service were discontinued.
38	281	Right-of-way expenses	0	None could be eliminated if suburban service were discontinued.
39		Payroll taxes	1,219	6.75% of the taxable portion of labor.
40		Total Maintenance of Way and Structures	38,808	
		II. Maintenance of Equipment		
41	302	Superintendence	0	No appreciable amount could be eliminated if suburban service were discontinued.
42	302	Shop machinery	163	The passenger charges to this account for the three divisions was multiplied by the percentage that suburban charges to Accounts 308, 311, 317 and 326 were of the passenger charges to these accounts for the three divisions and further multiplied by the use portion.
43	304	Power plant machinery-train operation portion	0	None used.
		-portion not used for train operation.	9	Same as Account 302.

[fol. 546]

EXHIBIT No. 13B

Exhibit No. [illegible]

(A) [illegible]

B

Suburban Out-of-Pocket Expenses
September to December, 1954, Inclusive

Expense Schedule A

Sheet 2 of 3 Sheets

Line No.	Account No. (1)	Item (2)	Amount (3)	Derivation of out-of-pocket costs for suburban service (4)
44	305	Shop and power plant machinery-Depreciation	$ 394	The passenger charges to this account for the three divisions was multiplied by the percentage that suburban charges to Accounts 308, 311, 317 and 326 were of the passenger charges to these accounts for the three divisions.
45	308	Steam locomotives-Repairs-road	0	Locomotive miles in suburban service multiplied by the system average repair cost per locomotive mile for 1954 for the classes of locomotives used.
		-yard	0	Elgin-same as road locomotives. Western Ave.-The passenger charges to this account for the Chicago Terminal division was multiplied by the percentage that yard switching hours handling suburban equipment was of the total passenger switching hours at Western Ave.
46	311	Other locomotives-Repairs-road	60,853	Diesel unit miles in suburban service multiplied by the system average repair cost per unit mile by horsepower classes.
		-yard	1,726	Elgin-same as road locomotives. Western Ave.-same as Account 308.
47	317	Passenger-train cars-Repairs	80,117	Passenger car miles in suburban service multiplied by the system average repair cost per passenger car mile, excluding mileage of Pullman cars, for the year 1954.
48	326	Work equipment-Repairs	563	Same as Account 269.
49	331	Equipment-Depreciation:		
		(a) Steam locomotives	0	None included
		(b) Diesel locomotives	51,720	Depreciation on locomotives in suburban service.
		(c) Passenger-train cars	13,272	Depreciation on passenger cars in suburban service.
50	332	Injuries to persons	1,399	The passenger charges to this account for the three divisions was multiplied by the percentage that suburban charges to Accounts 302, 304 and 308 - 328 were of the passenger charges to these accounts for the three divisions.
51	333	Insurance	452	Same as Account 332.
52	334	Stationery and printing	181	Same as Account 332.
53	335	Other expenses	427	Same as Account 332.
54		Payroll taxes	4,479	6.75% of the taxable portion of labor.
55		Total maintenance of equipment	215,755	
		III. Traffic		
56	353	Timetables	1,191	The only traffic expense which could be eliminated if suburban service were discontinued is the cost of printing suburban timetable leaflets.
57		Payroll taxes	0	
58		Total Traffic Expenses	1,191	
		IV. Transportation-Rail Line		
59	371	Superintendence	0	No appreciable amount could be eliminated.
60	372	Dispatching trains	0	Same as Account 371.
61	373	Station employes	1,755	Includes only wages of employees who would be eliminated if suburban service were discontinued.
62	376	Station supplies and expenses	580	Includes only station supplies and expenses at stations which would be eliminated if suburban service were discontinued.
83	377	Yardmasters and yard clerks	0	None could be eliminated if suburban service were discontinued.
64	378	Yard conductors and brakemen	8,194	Western Ave.-The passenger charges to this account for the Chicago Terminal division was multiplied by 7.61%, which is the percentage that switching locomotive hours handling suburban equipment was of the total switching locomotive hours handling all passenger equipment at Western Ave. during the seven day test study period December 16 - 22, 1954, inclusive. Elgin-The switching expense at Elgin was apportioned to suburban service upon the percentage that yard switching hours handling suburban equipment was of the total yard switching hours.
65	379	Yard switch and signal tenders	0	None could be eliminated if suburban service were discontinued.
66	380	Yard enginemen	5,797	Same as Account 378.
67	382	Yard switching fuel	1,198	Same as Account 378.
68	385	Water for yard locomotives	25	Same as Account 378.
69	386	Lubricants for yard locomotives	45	Same as Account 378.
70	387	Other supplies for yard locomotives	36	Same as Account 378.
71	388	Enginehouse expenses-Yard	1,359	Same as Account 378.
72	389	Yard supplies and expenses	176	Same as Account 378.
73	392	Train enginemen	119,231	Includes only wages of employes who would be eliminated if suburban service were discontinued.
74	394	Train fuel	77,596	Based upon studies made during December 1954 and January 1955.
75	397	Water for train locomotives	573	Western Ave. and Elgin prorated on basis of engines handled. Deerfield, Fox Lake and Walworth actual for suburban locomotives.

[fol. 5481]

Suburban Out-of-Pocket Expenses
September to December, 1954, Inclusive.

Line No.	Account No. (1)	Item (2)	Amount (3)	Derivation of out-of-pocket costs for suburban service (4)
76	398	Lubricants for train locomotives	$ 4,310	The passenger charges to this account for the three divisions was multiplied by the percentage that suburban locomotive unit miles plus locomotive ton miles are the locomotive unit miles plus locomotive ton miles for the three divisions. In both cases the locomotive unit miles are weighted at 20% and the locomotive ton miles are weighted at 80%.
77	399	Other supplies for train locomotives	862	The passenger charges to this account for the three divisions was multiplied by the percentage that suburban unit locomotive miles is of the passenger unit locomotive miles for the three divisions.
78	400	Enginehouse expense-train	38,737	Deerfield, Fox Lake and Walworth - Expenses could be eliminated if suburban service were discontinued. Elgin - Apportioned on basis of engines handled. Western Ave. - A special study was made covering direct labor for the period December 13 - 21, 1954, inclusive, which indicated a weighted average of 1.87 for road diesel units, 1.00 for suburban diesel units and .51 for yard diesel units. The actual units handled during any period were multiplied by the weighted average and suburban service was charged with its percentage of the total diesel enginehouse expense. Out-of-pocket was estimated to be 75% of the total in both cases.
79	401	Trainmen	154,719	Includes only wages of employes who would be eliminated if suburban service were discontinued.
80	402	Train supplies and expenses	63,867	Outside cleaning at Western Ave.-Suburban based upon percentage that suburban cars washed were of the total cars washed. Inside cleaning-Wages of employes who would be eliminated if suburban service were discontinued and supplies used by them. Heating-Suburban based upon percentage that suburban cars handled at Western Ave. were of the total passenger cars handled. Lubricating-Based upon actual charges during December 1954 and January 1955. Other items such as turning seats, handling mars lights and coupling steam and air hose-Includes only expense that would be eliminated if suburban service were discontinued.
81	404	Signal and interlocker operation	0	None would be eliminated if suburban service were discontinued.
82	405	Crossing protection	0	Same as Account 404.
83	407	Communication system operation	0	Same as Account 404.
84	410	Stationery and Printing	1,855	The passenger charges to this account for the three divisions were multiplied by the percentage that suburban charges to Accounts 372 - 406 were of the passenger charges to these accounts for the three divisions.
85	411	Other expenses	660	Same as Account 410.
86	412	Operating joint tracks and facilities-Dr.	1,974	Reduction in payments to Pennsylvania RR. Co. for use of tracks, Canal St. to Western Ave., if suburban service were discontinued.
87	413	Operating joint tracks and facilities-Cr.	0	Reduction in amounts billed the Pennsylvania RR. Co. for expense in connection with use of tracks, Canal St. to Western Ave., if suburban service were discontinued.
88	414	Insurance	117	Same as Account 410.
89	415	Clearing wrecks	0	Actual payments which would be eliminated if suburban service were discontinued.
90	416	Damage to property	0	Same as Account 415.
91	417	Damage to live stock on right of way	0	Same as Account 415.
92	419	Loss and damage-baggage	32	Same as Account 415.
93	420	Injuries to persons	2,971	Same as Account 415.
94		Payroll taxes	19,008	6.75% of the taxable portion of labor.
95		Total Transportation	505,677	
		VII. General		
96	451	Salaries and expenses of general officers	0	The only general expenses which could be eliminated if suburban service were discontinued is clerical expense in the offices of our Chief Disbursement Accountant, Auditor of Passenger Accounts and Auditor of Equipment Accounts.
97	452	Salaries and expenses of clerks and attendants	2,644	
98	453	General office supplies and expenses	0	
99	454	Law expenses	0	
100	455	Insurance	0	
101	457	Pensions and gratuities	0	
102	458	Stationery and printing	0	
103	459	Valuation expense	0	
104	460	Other expenses	0	
105	461	General joint facilities-Dr.	0	
106	462	General joint facilities-Cr.	0	
107		Payroll taxes	149	6.75% of the taxable portion of labor.
108		Total General Expenses	2,793	
109		Total Operating Expenses	764,224	
	532	Railway tax accruals (excluding payroll taxes)		
110		Property taxes	0	No appreciable amount could be eliminated if suburban service were discontinued.
111		Total operating expenses and taxes	$ 764,224	

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

OPERATING EXPENSES, RENTS, TAXES, FIXED AND OTHER CHARGES, LESS REVENUES AND OTHER INCOME OF CHICAGO UNION STATION COMPANY, PROPORTIONS THEREOF PAID BY CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, AND PROPORTIONS THEREOF WHICH WOULD NOT HAVE BEEN PAID IF NO SUBURBAN BUSINESS HAD BEEN CONDUCTED BY CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

YEAR 1954

Line No.	Expense or revenue groups (1)	Source (2)	Total Station Net Cost (3)	Proportion thereof paid by CMStP&P RR Fully distributed basis (As billed) Total (4)	Through (5)	Suburban (6)	Suburban relievable expenses (7)
	EXPENSES AND RENTS						
1	Maintenance of way and structures	Col.(3) - line 32, sheet 2; Cols.(4) to (7) - line 32, sheet 6.	$ 1,243,913.73	$ 349,003.77	$ 228,893.42	$ 120,110.35	$ 47,881.13
2	Maintenance of equipment	Col.(3) - line 40, sheet 2; Cols.(4) to (7) - line 40, sheet 6.	92,325.93	24,518.43	16,080.36	8,438.07	2,522.93
3	Traffic	Col.(3) - line 1, sheet 3; Cols.(4) to (7) - line 1, sheet 7.	145.00	45.88	30.09	15.79	11.82
4	Transportation	Col.(3) - line 38, sheet 3; Cols.(4) to (7) - line 38, sheet 7.	3,654,621.81	1,103,534.90	723,751.15	379,783.75	245,964.67
5	Miscellaneous operations	Col.(3) - line 4, sheet 4; Cols.(4) to (7) - line 4, sheet 8.	394,349.86	92,016.17	60,348.62	31,667.55	-
6	General	Col.(3) - line 14, sheet 4; Cols.(4) to (7) - line 14, sheet 8.	100,734.30	31,874.02	20,904.51	10,969.51	8,208.39
7	Net rents	Col.(3) - line 19, sheet 4; Cols.(4) to (7) - line 19, sheet 8.	16,582.81	3,653.94	2,396.43	1,257.51	940.98
8	Total operating expenses and rents		5,502,673.44	1,604,647.11	1,052,404.58	552,242.53	305,529.92
	TAXES, FIXED AND OTHER CHARGES						
9	Taxes including payroll taxes	Col.(3) - lines 1 to 3, sheet 5; Cols.(4) to (7) - lines 1 to 3, sheet 9.	1,285,340.84	298,841.74	195,994.76	102,846.98	-
10	Fixed and other charges	Col.(3) - lines 4 to 8, sheet 5; Cols.(4) to (7) - lines 4 to 8, sheet 9.	1,735,471.67	403,258.65	264,476.37	138,782.28	-
11	Total taxes, fixed and other charges		3,020,812.51	702,100.39	460,471.13	241,629.26	-
12	TOTAL EXPENSES, RENTS, TAXES, FIXED AND OTHER CHARGES		8,523,485.95	2,306,747.50	1,512,875.71	793,871.79	305,529.92
	REVENUES AND OTHER INCOME						
13	Operating revenues	Col.(3) - line 17, sheet 5; Cols.(4) to (7) - line 17, sheet 9.	2,064,216.66	481,656.83	315,893.67	165,763.16	-
14	Other income	Col.(3) - line 23, sheet 5; Cols.(4) to (7) - line 23, sheet 9.	27,228.85	26,788.62	17,569.26	9,219.36	-
15	Total revenues and other income		2,091,445.51	508,445.45	333,462.93	174,982.52	-
16	NET COST - CHICAGO UNION STATION		$ 6,432,040.44	$ 1,798,302.05	$ 1,179,412.78	$ 618,889.27	$ 305,529.92

Exhibit No. _____
Witness _____

Exhibit 14-

[fol. 857]

Sheet 5 of 10

OPERATING EXPENSES, RENTS, TAXES, FIXED AND OTHER CHARGES, LESS REVENUES AND OTHER INCOME OF CHICAGO UNION STATION COMPANY, AND PROPORTIONS THEREOF PAID BY THE THREE PROPRIETARY LINES
YEAR 1954

Line No.	Account (1)	Total (2)	Extraordinary Flood Damage Expense (3)	Total (As adjusted) (4)	Gulf, Mobile & Ohio R.R. Co. proportion (5)	Proprietary Lines' Proportion of Expenses or Revenues		
						Total (6)	Ownership Basis (7)	Use Basis (8)
25	NET COST - CHICAGO UNION STATION	$ 7,183,418.77	$ 751,378.33	$ 6,432,040.44	$ 482,440.56	$ 5,947,169.20	$ 2,447,590.84	$ 3,499,578.36

389

Exhibit 14

PROPORTION OF CHICAGO UNION STATION COMPANY OPERATING EXPENSES, RENTS, TAXES, FIXED AND OTHER CHARGES, LESS REVENUES AND OTHER INCOME, PAID BY CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, AND ALLOCATION THEREOF BETWEEN THROUGH SERVICE AND SUBURBAN SERVICE (FULLY DISTRIBUTED BASIS); ALSO, PROPORTION THEREOF WHICH WOULD NOT HAVE BEEN PAID IF NO SUBURBAN BUSINESS HAD BEEN CONDUCTED BY THE MILWAUKEE RAILROAD

YEAR 1954

Line No.	Account (1)	Through and Suburban			Through Service			Suburban (Fully Distributed)			Suburban Relievable Expenses (g) (11)
		Total (2)	Ownership Basis (a) (3)	Use Basis (b) (4)	Total (5)	Ownership Basis (c) (6)	Use Basis (d) (7)	Total (8)	Ownership Basis (e) (9)	Use Basis (f) (10)	
25	NET COST-CHICAGO UNION STATION	$1,798,302.05	$ 611,897.71	$1,186,404.34	$1,179,412.78	$401,311.88	$778,100.90	$618,889.27	$210,585.83	$408,303.44	$305,529.92

Explanatory notes (a), (b), (c), (d), (e), (f) and (g) appear on page 8 of this exhibit.

Exhibit No. 14

[fol. 362]

COUNT OF CARS - CHICAGO UNION STATION - YEAR 1954

Line No.	Companies (1)	Car Count		Percent of CMStP&P (4)	If CMStP&P Suburban Service Discontinued		
		No. of Cars (2)	Percent of Total (3)		No. of Cars (5)	Percent of Total (6)	Percent of CMStP&P (7)
	Proprietary:						
1	Pennsylvania	192,249	28.268378	-	192,249	32.002138	-
2	CB&Q	257,278	37.830271	-	257,278	42.826989	-
	CMStP&P:						
3	Through trains	151,211	-	65.584799	151,211	-	100.000000
4	Suburban trains	79,347	-	34.415201	-	-	-
5	Total CMStP&P	230,558	33.901351	100.000000	151,211	25.170873	100.000000
6	Total Proprietary*	680,005	100.000000	-	600,738	100.000000	-
	GM&O Agreement:						
7	Total Proprietary	715,750	93.334550	-	621,768	92.403583	-
8	GM&O	51,115	6.665450	-	51,115	7.596417	-
9	Total	766,865	100.000000	-	672,883	100.000000	-

Note: *In operating agreement with proprietary companies, suburban cars are counted as 4/5th of a through car.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

COMMUTATION AND MULTIPLE RIDE TICKET FARES INDEX COMPARED WITH INDEXES OF UNIT COST OF LABOR AND VARIOUS COMMODITIES
YEAR 1940 = 100

Year	Intrastate Commutation and Multiple Ride Ticket Fares *	# Railway Costs				ø Cost of Living				ø Average Hourly Earnings all Mfg. Indust. U. S.
		Labor	Fuel		Other Materials	Food	Wearing Apparel	House Furnishings	All Items	
			Coal	Diesel Fuel						
1940	100	100	100	100	100	100	100	100	100	100
1941	100	112	99	89	111	109	105	107	105	110
1942	100	112	106	96	116	128	122	122	116	129
1943	100	112	115	101	121	143	127	125	124	145
1944	100	123	118	105	123	141	136	136	126	154
1945	110	125	124	107	128	144	143	145	128	155
1946	110	142	145	110	154	165	157	158	139	164
1947	121	168	170	147	174	201	183	183	159	187
1948	143	174	207	216	201	218	195	195	172	204
1949	143	210	204	185	194	209	187	188	170	212
1950	143	210	223	191	223	212	184	189	172	222
1951	169	240	207	208	228	236	201	210	185	241
1952	169	253	213	197	231	240	199	205	189	253
1953	169	254	219	198	238	236	197	204	191	268
1954	169	256	218	197	242	236	196	200	192	272

* Fare increase of 10% effective April 25, 1945.
Fare increase of 10% effective November 1, 1947.
Fare increase of 20% over April 25, 1945 rates, effective May 9, 1948.
Fare increase of 30% over April 25, 1945 rates, effective December 7, 1948.
Fare increase of 18% effective September 21, 1951.

\# Labor, based upon straight time hourly rate in month of December each year.
Fuel, based upon unit costs of coal and diesel fuel from I.C.C. Form OS-E, items 6-01 and 6-03.

ø Source: Business Statistics, 1953 Biennial Edition, U. S. Department of Commerce, and Monthly Labor Review (February 1955 issue) U. S. Department of Labor.

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[fol. 563]

EXHIBIT No. 15
Exhibit No. ____
Witness: Stephenson

EXHIBIT No. 18
[fol. 565a]

~~I.C.C. DOCKET NO. 31702~~
EXHIBIT NO. 19
WITNESS Paisie

MILEAGE SCALE BASIS OF 12-RIDE WEEKLY, 46-RIDE MONTHLY AND UNRESTRICTED MONTHLY FARES PREVAILING ON THE CHICAGO AND NORTHWESTERN RY. CO. AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC R. R. CO., AS OF APRIL 18, 1955

Distance	12-Ride Weekly C&NW	12-Ride Weekly CMSTP&P	46-Ride Monthly C&NW	46-Ride Monthly CMSTP&P	Unrestricted Monthly C&NW	Unrestricted Monthly CMSTP&P
3	$ 2.00	$ -	$ 7.20	$ 3.00	$ 8.00	$ 3.85
4	2.00	-	7.20	4.10	8.00	5.10
5	2.00	-	7.20	4.95	8.00	6.00
6	2.25	-	8.10	5.50	9.00	7.20
7	2.50	1.80	9.00	6.40	10.00	8.40
8	2.75	2.00	9.90	7.35	11.00	9.60
9	3.00	2.20	10.80	8.25	12.00	10.20
10	3.25	2.40	11.70	9.20	13.00	10.80
11	3.45	2.64	12.40	10.10	13.80	11.30
12	3.65	2.88	13.15	10.60	14.60	11.80
13	3.85	3.08	13.85	11.05	15.40	12.30
14	4.05	3.20	14.60	11.50	16.20	12.80
15	4.25	3.33	15.30	11.95	17.00	13.30
16	4.40	3.45	15.85	12.40	17.60	13.80
17	4.55	3.58	16.40	12.85	18.20	14.30
18	4.70	3.70	16.90	13.30	18.80	14.80
19	4.85	3.80	17.45	13.70	19.40	15.20
20	5.00	3.90	18.00	14.05	20.00	15.60
21	5.10	4.00	18.40	14.40	20.40	16.00
22	5.20	4.10	18.75	14.80	20.80	16.40
23	5.30	4.20	19.10	15.15	21.20	16.80
24	5.40	4.30	19.45	15.50	21.60	17.20
25	5.50	4.40	19.80	15.85	22.00	17.60
26	5.60	4.50	20.20	16.20	22.40	18.00
27	5.70	4.60	20.55	16.60	22.80	18.40
28	5.80	4.70	20.90	16.95	23.20	18.80
29	5.90	4.80	21.25	17.30	23.60	19.20
30	6.00	4.90	21.60	17.65	24.00	19.60
31	6.10	5.00	22.00	18.00	24.40	20.00
32	6.20	5.10	22.35	18.40	24.80	20.40
33	6.30	5.20	22.70	18.75	25.20	20.80
34	6.40	5.30	23.05	19.10	25.60	21.20
35	6.50	5.40	23.40	19.45	26.00	21.60
36	6.60	5.50	23.80	19.80	26.40	22.00
37	6.70	5.60	24.15	20.20	26.80	22.40
38	6.80	5.70	24.50	20.55	27.20	22.80
39	6.90	5.80	24.85	20.90	27.60	23.20
40	7.00	5.90	25.20	21.25	28.00	23.60
41	7.10	6.00	25.60	21.60	28.40	24.00
42	7.20	6.10	25.95	22.00	28.80	24.40
43	7.30	6.20	26.30	22.35	29.20	24.80
44	7.40	6.30	26.65	22.70	29.60	25.20
45	7.50	6.40	27.00	23.05	30.00	25.60
46	7.60	6.50	27.40	23.40	30.40	26.00
47	7.70	6.60	27.75	23.80	30.80	26.40
48	7.80	6.70	28.10	24.15	31.20	26.80
49	7.90	6.80	28.45	24.50	31.60	27.20
50	8.00	6.90	28.80	24.85	32.00	27.60
51	8.10	7.00	29.20	25.20	32.40	28.00
52	8.20	7.10	29.55	25.60	32.80	28.40
53	8.30	7.20	29.90	25.95	33.20	28.80
54	8.40	7.30	30.25	26.30	33.60	29.20
55	8.50	7.40	30.60	26.65	34.00	29.60
56	8.60	7.50	31.00	27.00	34.40	30.00
57	8.70	7.60	31.35	27.40	34.80	30.40
58	8.80	7.70	31.70	27.75	35.20	30.80
59	8.90	7.80	32.05	28.10	35.60	31.20
60	9.00	7.90	32.40	28.45	36.00	31.60
61	9.10	8.00	32.80	28.80	36.40	32.00
62	9.20	8.10	33.15	29.20	36.80	32.40
63	9.30	8.20	33.50	29.55	37.20	32.80
64	9.40	8.30	33.85	29.90	37.60	33.20
65	9.50	8.40	34.20	30.25	38.00	33.60
66	9.60	8.50	34.60	30.60	38.40	34.00
67	9.70	8.60	34.95	31.00	38.80	34.40
68	9.80	8.70	35.30	31.35	39.20	34.80
69	9.90	8.80	35.65	31.70	39.60	35.20
70	10.00	8.90	36.00	32.05	40.00	35.60
71	10.10	9.00	36.40	32.40	40.40	36.00
72	10.20	9.10	36.75	32.80	40.80	36.40
73	10.30	9.20	37.10	33.15	41.20	36.80
74	10.40	9.30	37.45	33.50	41.60	37.20

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD

PASSENGER TRAFFIC DEPARTMENT

PRESENT C. M. St. P. & P. ONE-WAY, ROUND-TRIP, COMMUTATION AND MULTIPLE RIDE FARES BETWEEN STATIONS IN CHICAGO SUBURBAN DISTRICT
AS COMPARED WITH FARES WHICH WOULD APPLY IF C. & N. W. BASIS WERE USED

BETWEEN CHICAGO AND	Distance from Chicago	One-Way Coach Fare		Round-Trip Coach Fare		10-Ride Bearer Limit 1 Year		25-Ride Bearer Limit 1 Year		12-Ride Weekly Individual		46-Ride Monthly Individual Limit Calendar Month		Unrestricted-Ride Individual Limit Calendar Month	
		C&NW Basis	CMStP&P Present	C&NW Basis	CMStP&P Present	C&NW Basis	CMStP&P Present	C&NW Basis	CMStP&P Present	C&NW Basis	CMStP&P Present	C&NW Basis	CMStP&P Present	C&NW Basis	CMStP&P Present
DUB. & ILL. DIVISION	Miles														
Hermosa . . . . . Ill.	6.1	$0.20	$0.16	$0.40	$0.30	$ 2.00	$ 1.50	$ 4.60	$ 3.45	$ 2.25	$1.80	$ 8.10	$ 5.50	$ 9.00	$ 7.20
Cragin. . . . . "	7.2	.21	.19	.40	.35	2.00	1.75	4.60	4.00	2.50	1.80	9.00	6.40	10.00	8.40
Hanson Park . . . . . "	7.9	.24	.22	.45	.40	2.25	2.00	5.19	4.60	2.75	2.00	9.90	7.35	11.00	9.60
Galewood. . . . . "	8.8	.27	.24	.50	.45	2.50	2.25	5.75	5.15	3.00	2.20	10.80	8.25	12.00	10.20
Mars. . . . . "	9.3	.27	.24	.50	.45	2.50	2.25	5.75	5.15	3.00	2.20	10.80	8.25	12.00	10.20
Mont Clare. . . . . "	9.7	.30	.25	.55	.45	2.75	2.25	6.35	5.15	3.25	2.40	11.70	9.20	13.00	10.80
Elmwood Park. . . . . "	10.4	.30	.27	.55	.50	2.75	2.50	6.35	5.75	3.25	2.40	11.70	9.20	13.00	10.80
River Grove . . . . . "	11.6	.36	.30	.65	.55	3.25	2.75	7.50	6.30	3.65	2.88	13.15	10.60	14.60	11.80
Franklin Park . . . . . "	13.4	.39	.35	.75	.65	3.75	3.25	8.64	7.45	3.85	3.08	13.85	11.05	15.40	12.30
Mannheim. . . . . "	14.2	.42	.36	.80	.65	4.00	3.25	9.20	7.45	4.05	3.20	14.60	11.50	16.20	12.80
Bensenville . . . . . "	17.4	.51	.45	.95	.85	4.75	4.25	10.95	9.75	4.55	3.58	16.40	12.85	18.20	14.30
Wooddale. . . . . "	19.3	.57	.49	1.05	.90	5.25	4.50	12.10	10.35	4.85	3.80	17.45	13.70	19.40	15.20
Itasca. . . . . "	21.2	.63	.53	1.15	1.00	5.75	5.00	13.25	11.50	5.10	4.00	18.40	14.40	20.40	16.00
Medinah . . . . . "	23.2	.69	.59	1.25	1.10	6.25	5.50	14.40	12.65	5.30	4.20	19.10	15.15	21.20	16.80
Roselle . . . . . "	24.6	.75	.62	1.35	1.15	6.75	5.75	15.55	13.20	5.50	4.40	19.80	15.85	22.00	17.60
Ontarioville . . . . . "	28.6	.87	.73	1.60	1.35	8.00	6.75	18.40	15.50	5.90	4.80	21.25	17.30	23.60	19.20
Bartlett. . . . . "	30.3	.90	.77	1.65	1.40	8.25	7.00	19.00	16.10	6.00	4.90	21.60	17.65	24.00	19.60
Spaulding . . . . . "	32.9	.99	.84	1.80	1.55	9.00	7.75	20.70	17.80	6.30	5.20	22.70	18.75	25.20	20.80
Elgin . . . . . "	36.8	1.11	.94	2.00	1.70	10.00	8.50	23.00	19.55	6.70	5.60	24.15	20.20	26.80	22.40
MILWAUKEE DIVISION															
Healy . . . . . Ill.	6.4	0.20	0.17	0.40	0.34	2.00	1.55	4.60	3.50	2.25	1.80	8.10	5.50	9.00	7.20
Grayland. . . . . "	8.2	.24	.22	.45	.40	2.25	2.00	5.19	4.60	2.75	2.00	9.90	7.35	11.00	9.60
Mayfair . . . . . "	9.0	.27	.24	.50	.45	2.50	2.25	5.75	5.15	3.00	2.20	10.80	8.25	12.00	10.20
Forest Glen . . . . . "	10.2	.30	.27	.55	.50	2.75	2.50	6.35	5.75	3.25	2.40	11.70	9.20	13.00	10.80
Edgebrook . . . . . "	11.3	.33	.28	.60	.55	3.00	2.75	6.90	6.30	3.45	2.64	12.40	10.10	13.80	11.30
Morton Grove. . . . . "	14.3	.42	.36	.80	.65	4.00	3.25	9.20	7.45	4.05	3.20	14.60	11.50	16.20	12.80
Golf. . . . . "	16.2	.48	.41	.90	.75	4.50	3.75	10.35	8.60	4.40	3.45	15.85	12.40	17.60	13.80
Glenview. . . . . "	17.4	.51	.45	.95	.85	4.75	4.25	10.95	9.75	4.55	3.58	16.40	12.85	18.20	14.30
Techny. . . . . "	20.3	.60	.52	1.10	.95	5.50	4.75	12.65	10.90	5.00	3.90	18.00	14.05	20.00	15.60
Northbrook. . . . . "	20.9	.63	.53	1.15	1.00	5.75	5.00	13.25	11.50	5.10	4.00	18.40	14.40	20.40	16.00
Deerfield . . . . . "	23.9	.72	.61	1.30	1.10	6.50	5.50	14.95	12.65	5.40	4.30	19.45	15.50	21.60	17.20
West Lake Forest. . . . "	28.0	.84	.72	1.55	1.30	7.75	6.50	17.85	14.95	5.80	4.70	20.90	16.95	23.20	18.80
Rondout . . . . . "	32.3	.96	.82	1.75	1.50	8.75	7.50	20.15	17.25	6.20	5.10	22.35	18.40	24.80	20.40
Libertyville. . . . . "	35.5	1.08	.90	1.95	1.65	9.75	8.25	22.45	18.95	6.60	5.50	23.80	19.80	26.40	22.00
Grays Lake. . . . . "	41.0	1.23	1.03	2.25	1.90	11.25	9.50	25.90	21.85	7.10	6.00	25.60	21.60	28.40	24.00
Round Lake. . . . . "	44.0	1.32	1.11	2.40	2.00	12.00	10.00	27.60	23.00	7.40	6.30	26.65	22.70	29.60	25.20
Long Lake . . . . . "	46.0	1.38	1.16	2.50	2.10	12.50	10.50	28.75	24.15	7.60	6.50	27.40	23.40	30.40	26.00
Wilson Road . . . . . "	46.7	1.41	1.19	2.55	2.15	12.75	10.75	29.35	24.70	7.70	6.60	27.75	23.80	30.80	26.40
Ingleside . . . . . "	47.8	1.44	1.22	2.60	2.20	13.00	11.00	29.90	25.30	7.80	6.70	28.10	24.15	31.20	26.80
Fox Lake. . . . . "	49.5	1.50	1.25	2.70	2.25	13.50	11.25	31.05	25.85	8.00	6.90	28.80	24.85	32.00	27.60
Spring Grove. . . . . "	53.7	1.62	1.36	2.95	2.45	14.75	12.25	33.95	28.15	8.40	7.30	30.25	26.30	33.60	29.20
Solon Mills . . . . . "	55.8	1.68	1.41	3.05	2.55	15.25	12.75	35.10	29.30	8.60	7.50	31.00	27.00	34.40	30.00
Belden. . . . . "	59.4	1.77	1.50	3.20	2.70	16.00	13.50	36.80	31.05	8.90	7.90	32.05	28.45	35.60	31.60
Hebron Siding . . . . . "	61.8	1.86	1.57	3.35	2.85	16.75	14.25	38.55	32.75	9.20	8.10	33.15	29.20	36.80	32.40
Zenda . . . . . Wis.	67.4	2.01	1.70	3.65	3.10	18.25	15.50	42.00	35.55	9.70	8.60	34.95	31.00	38.80	34.40
Walworth. . . . . "	73.5	2.22	1.85	4.00	3.35	20.00	16.25	46.00	37.35	10.40	9.30	37.45	33.50	41.60	37.20

[fol. 566]

EXHIBIT No. 19

I.C.C. DOCKET NO. 31742
EXHIBIT NO. 19
WITNESS

[fol. 587] PROTESTANT'S EXHIBIT NO. 21

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF:	)	
CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD	)	DOCKET NO. 31742

Exhibit No. _____

Witness _____

Sheet 1 of 2

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

NON-REVENUE PASSENGERS USING CHICAGO SUBURBAN TRAINS REGULARLY

NORTH LINE

Between Chicago and	One Way Riders				Round Trip Riders				Total				
		Annual		Monthly Cash Value (See Note)		Annual		Monthly Cash Value (See Note)	No. of Riders		Annual		Monthly Cash Value (See Note)
	No. of Riders	Passengers Carried	Passenger Miles		No. of Riders	Passengers Carried	Passenger Miles		One Way	Round Trip	Passengers Carried	Passenger Miles	
Healy					22	10,736	68,710	$ 121.00		22	10,736	68,710	$ 121.00
Grayland					32	15,616	128,051	235.20		32	15,616	128,051	235.20
Mayfair					37	18,056	162,504	305.25		37	18,056	162,504	305.25
Forest Glen					27	13,176	134,395	248.40		27	13,176	134,395	248.40
Edgebrook					29	14,152	159,918	292.90		29	14,152	159,918	292.90
Morton Grove					12	5,856	83,741	138.00		12	5,856	83,741	138.00
Glenview					24	11,712	203,789	308.40		24	11,712	203,789	308.40
Northbrook					16	7,808	163,187	230.40		16	7,808	163,187	230.40
Deerfield					25	12,200	291,580	387.50		25	12,200	291,580	387.50
West Lake Forest					3	1,464	40,992	50.85		3	1,464	40,992	50.85
Rondout					1	488	15,762	18.40		1	488	15,762	18.40
Libertyville					20	9,760	346,480	396.00		20	9,760	346,480	396.00
Grays Lake					12	5,856	240,096	259.20		12	5,856	240,096	259.20
Round Lake					31	15,128	665,632	703.70		31	15,128	665,632	703.70
Long Lake					4	1,952	89,792	93.60		4	1,952	89,792	93.60
Wilson Road					2	976	45,579	47.60		2	976	45,579	47.60
Ingleside					6	2,928	139,958	144.90		6	2,928	139,958	144.90
Fox Lake					60	29,280	1,449,360	1,491.00		60	29,280	1,449,360	1,491.00
Spring Grove					2	976	52,411	52.60		2	976	52,411	52.60
Walworth					3	1,464	107,604	100.50		3	1,464	107,604	100.50
Intermediate Between													
Forest Glen and Northbrook					1	488	3,514	11.18		1	488	3,514	11.18
Techny and Deerfield					1	488	1,757	6.10		1	488	1,757	6.10
Deerfield and Rondout					1	488	4,099	8.13		1	488	4,099	8.13
" " Grays Lake					1	488	8,345	16.27		1	488	8,345	16.27
West Lake Forest and Rondout					1	488	2,098	6.10		1	488	2,098	6.10
Rondout and Libertyville					2	976	3,123	12.20		2	976	3,123	12.20
" " Round Lake					3	1,464	17,129	36.60		3	1,464	17,129	36.60
Libertyville and Fox Lake					1	488	6,832	13.22		1	488	6,832	13.22
Grays Lake and Fox Lake					1	488	4,148	9.15		1	488	4,148	9.15
Fox Lake and Spring Grove					1	488	2,050	6.10		1	488	2,050	6.10
" " " Walworth					2	976	23,424	44.73		2	976	23,424	44.73
Total					383	186,904	4,666,060	$5,795.18		383	186,904	4,666,060	$ 5,795.18
Cash Value (On 6 month basis)													$34,771.08

Note: Monthly cash value based upon 25 ride ticket for one way riders and 46 ride monthly ticket for round trip riders and intermediate based upon one way and round trip fares.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

NON-REVENUE PASSENGERS USING CHICAGO SUBURBAN TRAINS REGULARLY

WEST LINE

Between Chicago and	One Way Riders				Round Trip Riders				Total				
		Annual		Monthly Cash Value (See Note)		Annual		Monthly Cash Value (See Note)	No. of Riders		Annual		Monthly Cash Value (See Note)
	No. of Riders	Passengers Carried	Passenger Miles		No. of Riders	Passengers Carried	Passenger Miles		One Way	Round T. p	Passengers Carried	Passenger Miles	
Western Avenue					19	9,272	28,743	$ 115.00		19	9,272	28,743	$ 115.00
Hermosa	1	244	1,488	$ 2.80	15	7,320	44,652	82.50	1	15	7,564	46,140	85.30
Cragin	4	976	7,027	13.01	10	4,880	35,136	64.00	4	10	5,856	42,163	77.01
Hanson Park					8	3,904	30,842	58.80		8	3,904	30,842	58.80
Galewood	1	244	2,147	4.19	19	9,272	81,594	156.75	1	19	9,516	83,741	160.94
Mars					3	1,464	13,615	24.75		3	1,464	13,615	24.75
Mont Clare	2	488	4,734	8.38	28	13,664	132,541	257.60	2	28	14,152	137,275	265.98
Elmwood Park	1	244	2,538	4.68	35	17,080	177,632	322.00	1	35	17,324	180,170	326.68
River Grove					17	8,296	96,234	180.20		17	8,296	96,234	180.20
Franklin Park					29	14,152	189,637	320.45		29	14,152	189,637	320.45
Mannheim					1	488	6,930	11.50		1	488	6,930	11.50
Bensenville	9	2,196	38,210	71.37	181	88,328	1,536,907	2,325.85	9	181	90,524	1,575,117	2,397.22
Wooddale					26	12,688	244,878	356.20		26	12,688	244,878	356.20
Itasca					11	5,368	113,802	158.40		11	5,368	113,802	158.40
Roselle					24	11,712	288,115	380.40		24	11,712	288,115	380.40
Ontarioville					1	488	13,957	17.30		1	488	13,957	17.30
Bartlett					17	8,296	251,369	300.05		17	8,296	251,369	300.05
Elgin	1	244	8,979	15.90	120	58,560	2,155,008	2,424.00	1	120	58,804	2,163,987	2,439.90
Intermediate Between													
Hanson Park and Mont Clare					6	2,928	5,270	36.60		6	2,928	5,270	36.60
" " " Elmwood Park					5	2,440	6,100	30.50		5	2,440	6,100	30.50
" " " River Grove					4	1,952	7,222	24.40		4	1,952	7,222	24.40
" " " Franklin Park					6	2,928	16,104	36.60		6	2,928	16,104	36.60
" " " Bensenville	2	488	4,636	10.17	9	4,392	41,724	82.35	2	9	4,880	46,360	92.52
" " " Roselle					2	976	16,299	32.53		2	976	16,299	32.53
" " " Elgin					2	976	28,206	54.90		2	976	28,206	54.90
Galewood and Mont Clare					3	1,464	1,318	18.30		3	1,464	1,318	18.30
" " Elmwood Park					2	976	1,562	12.20		2	976	1,562	12.20
" " River Grove					2	976	2,733	12.20		2	976	2,733	12.20
" " Franklin Park					3	1,464	6,734	18.30		3	1,464	6,734	18.30
" " Bensenville					5	2,440	20,984	45.75		5	2,440	20,984	45.75
" " Wooddale	1	244	2,562	5.49					1		244	2,562	5.49
" " Itasca					2	976	12,102	24.40		2	976	12,102	24.40
" " Ontarioville					1	488	9,662	18.30		1	488	9,662	18.30
" " Bartlett					2	976	20,984	40.67		2	976	20,984	40.67
" " Elgin					1	488	13,664	26.43		1	488	13,664	26.43
Mannheim and Elgin	1	244	5,514	11.79	3	1,464	33,086	64.05	1	3	1,708	38,600	75.84
Bensenville and Elmwood Park					3	1,464	10,248	21.35		3	1,464	10,248	21.35
" " Franklin Park	1	244	976	3.05	10	4,880	19,520	61.00	1	10	5,124	20,496	64.05
" " Mannheim	1	244	781	3.05	6	2,928	9,370	36.60	1	6	3,172	10,151	39.65
" " Wooddale	1	244	464	3.05	21	10,248	19,471	128.10	1	21	10,492	19,935	131.15
" " Itasca					9	4,392	16,690	54.90		9	4,392	16,690	54.90
" " Roselle					13	6,344	45,677	92.52		13	6,344	45,677	92.52
" " Ontarioville					3	1,464	16,397	33.55		3	1,464	16,397	33.55
" " Bartlett	1	244	3,148	6.91	15	7,320	94,428	198.25	1	15	7,564	97,576	205.16
" " Elgin					55	26,840	520,696	1,006.50		55	26,840	520,696	1,006.50
Total	27	6,588	83,204	163.84	757	369,416	6,437,843	9,767.90	27	757	376,004	6,521,047	$ 9,931.74
Cash Value (On 6 month basis)													$ 59,590.44

Note: Monthly cash value based upon 25 ride ticket for one way riders and 46 ride monthly ticket for round trip riders and intermediate based upon one way and round trip fares.

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CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

CHICAGO SUBURBAN SERVICE

REVENUES, EXPENSES AND NET RAILWAY OPERATING INCOME - JANUARY 1 TO JUNE 30, 1952

Line No.	Items	With Expenses on Fully Distributed Basis			With Expenses on Out-of-pocket Basis		
		Passenger Service	Head-end Service	Total	Passenger Service	Head-end Service	Total
1	Railway Operating Revenues:						
2	Passenger:						
3	Commutation	$ 673,580	$ 0	$ 673,580	$ 673,580	$ 0	$ 673,580
4	One-way, round-trip tickets and cash fares	168,879	0	168,879	168,879	0	168,879
5	Mail	0	1,267	1,267	0	1,267	1,267
6	Express	0	15,124	15,124	0	15,124	15,124
7	Milk	0	71	71	0	71	71
8	Newspapers	0	2,079	2,079	0	2,079	2,079
9	Advertising in cars	1,158		1,158	1,158		1,158
10	Total	843,617	18,541	862,158	843,617	18,541	862,158
11	Railway Operating Expenses:						
12	Maintenance of Way and Structures:						
13	Depreciation - roadway	9,597	381	9,978	0	0	0
14	Repairs and other expenses	150,632	5,983	156,615	14,957	594	15,551
15	Total	160,229	6,364	166,593	14,957	594	15,551
16	Maintenance of equipment:						
17	Depreciation - locomotives and cars	41,990	1,668	43,658	0	0	0
18	Repairs - locomotives	207,035	8,223	215,258	207,035	8,223	215,258
19	- cars	128,881	5,119	134,000	128,881	5,119	134,000
20	Other expenses	29,302	1,164	30,466	0	0	0
21	Total	407,208	16,174	423,382	335,916	13,342	349,258
22	Traffic	1,397	55	1,452	1,397	55	1,452
23	Transportation:						
24	Supervision	30,012	1,192	31,204	0	0	0
25	Station service	40,825	1,621	42,446	4,204	167	4,371
26	Yard service	48,257	1,917	50,174	34,373	1,365	35,738
27	Train service:						
28	Trainmen	213,355	8,474	221,829	213,355	8,474	221,829
29	Enginemen	153,168	6,083	159,251	153,168	6,083	159,251
30	Fuel for locomotives	226,482	8,995	235,477	226,482	8,995	235,477
31	Enginehouse expense	163,369	6,489	169,858	163,369	6,489	169,858
32	Train supplies and expenses	86,499	3,436	89,935	86,499	3,436	89,935
33	Water, lubricants and other supplies	20,053	796	20,849	20,053	796	20,849
34	Miscellaneous expenses	52,845	2,099	54,944	5,041	201	5,242
35	Total Transportation	1,034,865	41,102	1,075,967	906,544	36,006	942,550
36	General	70,289	2,792	73,081	3,416	136	3,552
37	Total Railway Operating Expenses	1,673,988	66,487	1,740,475	1,262,230	50,133	1,312,363
38	Taxes:						
39	Payroll taxes	58,561	2,326	60,887	45,868	1,822	47,690
40	Property taxes	50,549	2,008	52,557	0	0	0
41	Total	109,110	4,334	113,444	45,868	1,822	47,690
42	Chicago Union Station Expense (C.M.St.P.& P. proportion)	200,518	7,964	208,482	165,515	6,574	172,089
43	Total Expenses	1,983,616	78,785	2,062,401	1,473,613	58,529	1,532,142
44	Net Railway Operating Income	Def. 1,139,999	Def. 60,244	Def. 1,200,243	Def. 629,996	Def. 39,988	Def. 669,984

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Exhibit No. 47
Witness

[fol. 606a]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

CHICAGO SUBURBAN SERVICE

DETAIL OF RAILWAY OPERATING EXPENSES BY PRIMARY ACCOUNTS - JANUARY 1 TO JUNE 30, 1952

Line No.	Acct. No.	Title	Fully Distributed Costs	Out-of-Pocket Costs
1		MAINTENANCE OF WAY AND STRUCTURES		
2	201	Superintendence	$ 11,294	
3	202	Roadway maintenance - Yard	111	
4	202	Road	3,625	
5	208	Bridges, trestles and culverts - Yard	0	
6	208	- Road	15,412	
7	212	Ties - Yard	307	
8	212	- Road	2,525	
9	214	Rails - Yard	72	
10	214	- Road	3,864	
11	216	Other Track Material - Yard	569	
12	216	- Road	13,888	
13	218	Ballast - Yard	0	
14	218	- Road	15	
15	220	TrackLaying and Surfacing - Yard	1,906	
16	220	- Road	26,446	
17	221	Fences, snowsheds and signs - Yard	0	
18	221	- Road	634	
19	227	Station and office buildings	25,095	$ 13,674
20	229	Roadway buildings	162	
21	231	Water stations	2,027	
22	233	Fuel stations	102	87
23	235	Shops and enginehouses	7,221	120
24	247	Communication systems	5,377	
25	249	Signals and interlockers	27,411	
26	253	Power plants	310	
27	257	Power transmission systems	1,013	
28	266	Road property - depreciation	9,978	
29	269	Roadway machines	2,016	
30	271	Small tools and supplies	1,665	
31	272	Removing snow, ice and sand	2,468	
32	273	Public improvements - maintenance	1,943	
33	274	Injuries to persons	1,926	
34	275	Insurance	234	
35	276	Stationery and printing	206	
36	277	Other expenses	121	
37	278	Maintaining joint tracks, yards and other facilities - Dr.	2,784	1,670
38	279	" " " " " " " - Cr.	Cr. 6,171	
39	281	Right of way expenses	37	
40		Total Maintenance of Way and Structures	$166,593	$ 15,551
41		MAINTENANCE OF EQUIPMENT		
42	301	Superintendence	$ 16,477	
43	302	Shop machinery	3,448	
44	304	Power plant machinery	1,008	
45	308	Steam locomotive repairs - Road	211,179	$211,179
46	308	" " " - Yard	1,399	1,399
47	311	Other locomotive repairs - Yard	2,680	2,680
48	317	Passenger train car repairs	134,000	134,000
49	326	Work equipment repairs	1,472	
50	331	Equipment depreciation (Locomotives and cars)	43,658	
51	332	Injuries to persons	5,925	
52	333	Insurance	763	
53	334	Stationery and printing	511	
54	335	Other expenses	862	
55		Total Maintenance of Equipment	423,382	349,258
56		TRAFFIC		
57	358	Stationery and printing (Printing timetables)	$ 1,452	$ 1,452

Sheet 3 of 3

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

CHICAGO SUBURBAN SERVICE

DETAIL OF RAILWAY OPERATING EXPENSES BY PRIMARY ACCOUNTS - JANUARY 1 TO JUNE 30, 1952
(CONTINUED)

Line No.	Acct. No.	Title	Fully Distributed Costs	Out-of-Pocket Costs
1		TRANSPORTATION		
2	371	Superintendence	$ 23,947	
3	372	Dispatching trains	7,259	
4		Total Supervision	31,204	
5	373	Station employees	39,144	$. 3,264
6	376	Station supplies and expenses	3,302	1,107
7		Total Station Service	42,446	4,371
8	377	Yardmasters and yard clerks	3,468	
9	378	Yard conductors and brakemen	18,839	17,219
10	379	Yard switch and signal tenders	7,093	
11	380	Yard enginemen	12,356	11,331
12	382	Yard switching fuel	2,159	1,851
13	385	Water for yard locomotives	444	370
14	386	Lubricants for yard locomotives	57	25
15	387	Other supplies for yard locomotives	174	130
16	388	Enginehouse expenses - yard	5,100	4,812
17	389	Yard supplies and expenses	484	
18		Total Yard Service	50,174	35,738
19	392	Train enginemen	159,251	159,251
20	394	Train fuel	235,477	235,477
21	397	Water for train locomotives	9,926	9,926
22	398	Lubricants for train locomotives	5,734	5,734
23	399	Other supplies for train locomotives	5,189	5,189
24	400	Enginehouse expenses - train	169,858	169,858
25	401	Trainmen	221,829	221,829
26	402	Train supplies and expenses	89,935	89,935
27		Total Train Service	897,199	897,199
28	404	Signal and interlocker operation	29,854	
29	405	Crossing protection	13,497	
30	407	Communication system operation	5,849	
31	410	Stationery and printing	4,168	
32	411	Other expenses	2,042	
33	412	Operating joint tracks and facilities - Dr.	7,646	2,961
34	413	" " " " " - Cr.	Cr. 11,373	
35	414	Insurance	980	
36	416	Damage to property	350	350
37	419	Loss and damage baggage	67	67
38	420	Injuries to persons	1,864	1,864
39		Total Other Expense	44,944	5,242
40		Total Transportation	$1,075,967	$942,550
41		GENERAL		
42	451	Salaries and expenses of general officers	$ 7,219	
43	452	Salaries and expenses of clerks and attendants	48,104	$ 3,552
44	453	General office supplies and expenses	3,594	
45	454	Law expenses	4,750	
46	455	Insurance	18	
47	457	Pensions	3,244	
48	458	Stationery and printing	3,081	
49	459	Valuation expenses	298	
50	460	Other expenses	2,773	
51		Total General	$ 73,081	$ 3,552
52		Total Operating Expenses	$1,740,475	$1,312,363

[fol. 606c] EXHIBIT No. 26 Sheet 1 of 15

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Chicago Suburban Service

METHOD USED IN DETERMINING REVENUES AND EXPENSES

[fol. 606d] Sheet 2 of 15

List of subdivisions of suburban lines for which separate train-mile and gross ton-mile statistics are developed for the purpose of apportioning certain common expenses between suburban and other traffic follows:

Used by both North and West Lines:

Canal Street to Western Avenue
Western Avenue to Pacific Junction

North Line:

Pacific Junction to Deerfield
Deerfield to Rondout
Rondout to Fox Lake
Fox Lake to Walworth

West Line:

Pacific Junction to Bensenville
Bensenville to Elgin

MAINTENANCE OF WAY AND STRUCTURES

The expenses included in this group of accounts are for maintenance of the roadway, tracks and other fixed property.

Account 201—Superintendence

Computed as a percentage of the total suburban expense in accounts 202 to 273 (except 266), and 281.

Account 201—Superintendence (Continued)

based upon the ratio that exists for the passenger service proportions of the same accounts for the total of the three operating divisions.

This is not included in the out of pocket cost.

Account 202—Roadway Maintenance

The average cost per equated track mile is developed for each section gang district in the suburban area and applied to the equated track miles used by suburban trains in such districts. In arriving at equated miles, a factor of 1 is used for first main track, 0.8 for other main tracks, and 0.5 for all other tracks. The cost of work done by floating gangs in suburban territory is assigned directly to the locations affected. Since the tracks used by suburban trains are also used by other trains, the next step is to apportion the resulting cost between suburban and other service. To the suburban service is charged the percentage that the gross ton-

[fol. 606e]

Sheet 3 of 13

miles of suburban trains for the various subdivisions is of the total gross ton-miles handled over these tracks, except for the yard tracks at Western Avenue where the expense is apportioned to suburban service in the ratio that the number of suburban cars handled is to the total number of cars handled.

None of this expense is included in the out of pocket cost.

Account 208—Bridges, trestles and culverts

The cost of this work is assigned directly to the locations affected and apportioned to suburban service on basis of gross ton-miles in the various subdivisions affected.

None of this expense is included in the out of pocket cost.

Account 212—Ties

214—Rails

Account 216—Other track material

218—Ballast

220—Tracklaying and surfacing

221—Fences, snowsheds, and signs

The cost of this work is assigned to suburban tracks and apportioned to suburban service as explained under Account 202.

None of this expense is included in the out of pocket cost.

Account 227—Station and office buildings

The actual cost of maintaining each station facility is developed and a portion is assigned to suburban service on the basis of relative use made of the station for suburban and other services as reported by each agent based upon studies.

Only the expense applicable to certain facilities used exclusively in suburban service are included in the out of pocket cost.

Account 229—Roadway buildings

The actual cost of maintaining the few buildings in this category is developed and assigned to suburban service on the basis of gross ton-miles.

This expense is not included in the out of pocket cost.

[fol. 606f]

Sheet 4 of 15

Account 231—Water stations

The actual cost of maintaining water station facilities where suburban locomotives take water is apportioned to suburban service in the ratio that the number of suburban locomotives is of the total number of locomotives taking water at each station.

None of this expense is included in the out of pocket cost.

Account 233—Fuel stations

The actual cost of maintenance is apportioned to suburban service in the ratio that the number of suburban locomotives taking fuel is of the total number of locomotives taking fuel at each location.

That part of the expense which would not be incurred but for suburban service is included in the out of pocket cost.

Account 235—Shops and enginehouses

The actual cost of maintaining buildings in which steam locomotives are serviced is apportioned to suburban service on the basis of the number of steam locomotives handled. The cost of maintaining shop buildings in which passenger cars are serviced is apportioned to suburban service on the basis of the number of cars handled. Practically all of these facilities are located at Western Avenue.

The only part of this expense included in the out of pocket cost is that for work on facilities used exclusively for servicing suburban equipment.

Account 247—Communication systems

The actual cost of maintaining this class of property in this general area is developed and allocated to suburban territory on the basis of wire-miles maintained. The cost in suburban territory is then apportioned to suburban service in the ratio that the suburban train miles is of the total train-miles in suburban territory, computed separately for each subdivision.

This expense is not included in the out of pocket cost.

Account 249—Signals and interlockers

The actual cost of maintaining line signals in the suburban territory, which includes a small amount of overlapping expense distributed on a track-mile basis, is apportioned to suburban service on a train-mile basis, computed separately for each subdivision.

Account 249—Signals and interlockers (Continued)

The actual cost of maintaining each interlocker in suburban territory is determined and apportioned to suburban service in the ratio that the number of suburban trains passing through each interlocking plant bears to the total number of trains passing through.

[fol. 606g]

Sheet 5 of 15

The actual cost of maintaining signals at highway crossings is allocated to suburban territory on the basis of the number of suburban tracks compared with total tracks protected at each crossing. The apportionment to suburban service is made on the percentage that suburban trains bears to the total trains passing the various locations.

None of this expense is included in the out of pocket cost.

Account 253—Power plants

257—Power transmission systems

The amount for each of these accounts is computed by applying a percentage to the total suburban expense in Accounts 308, 311, 317, 388, and 400. The percentage used is the relationship between the same accounts for the total of the three operating divisions, for passenger service expense.

None of this expense is included in the out of pocket cost.

Account 266—Road property—Depreciation

Computed by applying a percentage to the approximate investment in road property (less land) in the suburban territory. This percentage is obtained by dividing the investment in road property (less land) for the system by the amount of depreciation accrued for system road property.

The resulting depreciation charge is apportioned to suburban service on a gross ton-mile basis.

This charge is not included in the out of pocket cost.

Account 269—Roadway machines

271—Small tools and supplies

281—Right of way expenses

The amount for each of these accounts is computed by applying a percentage to the total suburban expense in Accounts 202 to 221, inclusive. This percentage is based on the relationship between the same accounts for the total of the three operating divisions, for passenger service expense.

This expense is not included in the out of pocket cost.

Account 272—Removing snow, ice and sand

The actual expense in the suburban territory located in the Dubuque & Illinois and the Milwaukee Divisions is developed and apportioned to suburban service in the ratio that the gross ton-miles of suburban trains is of the total gross ton-miles in suburban territory.

[fol. 606h] Sheet 6 of 15

The passenger service proportion of the Chicago Terminal expense, practically all of which applies to the Western Avenue Coach Yard, is apportioned to suburban service in the ratio that suburban cars handled in the coach yard bears to the total cars handled at that point.

This expense is not included in the out of pocket cost.

Account 273—Public improvements—Maintenance

The actual expense in the suburban territory located in the Dubuque & Illinois and the Milwaukee Divisions is developed, to which is added the passenger service proportion of the expense for the Chicago Terminals, which all applies to suburban territory. These amounts are apportioned to suburban service in the ratio that the gross ton-miles of suburban trains is of the total gross ton-miles in suburban territory.

This expense is not included in the out of pocket cost.

Account 274—Injuries to persons

275—Insurance

276—Stationery and printing

277—Other expenses

The amount for each account is computed as a percentage of the total of suburban expense in accounts 202 to 273 (except 266), and 281. This percentage is based on the relationship between the same accounts for the total of the three operating divisions, for passenger service expense.

None of this expense is included in the out of pocket cost.

Account 278—Maintaining joint tracks, yards and other facilities—Dr.

Joint Interlocking Plants

Amounts billed against the Milwaukee by other carriers are apportioned to suburban service at each location on the basis of the number of its trains passing through the plant.

This is not included in the out of pocket cost.

Joint Crossing Tracks at Western Avenue, with C. & N.W.

Amounts billed against the Milwaukee are apportioned to suburban service on the basis of gross ton-miles of trains passing over the tracks.

This is not included in the out of pocket cost.

[fol. 606i] — Sheet 7 of 15

Joint Milw.-Penn. Line—Canal St. to Western Ave.

Amounts billed against the Milwaukee are apportioned to suburban service on car-foot-mile basis for traffic passing over this line.

This is an out of pocket cost which would not be incurred if the suburban service were discontinued.

Account 279—Maintaining joint tracks, yards and other facilities—Cr.

Represents amounts received from other carriers in reimbursement for their proportion of the cost of maintaining joint interlocking plants. Apportioned to suburban service on the basis of the number of trains passing through each plant.

These credits do not reduce out of pocket costs as these amounts would be collected if suburban service were discontinued.

Account 281—Right of way expenses

See Account 274 for explanation.

MAINTENANCE OF EQUIPMENT

The expenses included in this group of accounts are for the maintenance of locomotives, cars, shop and power plant machinery.

Account 301—Superintendence

Computed as a percentage of the total of suburban expense in Accounts 302 to 328 inclusive, using the percentage that obtains between these accounts for the total of the three operating divisions, for passenger service expense.

This is not included in the out of pocket cost.

Account 302—Shop machinery

304—Power plant machinery

The amount for each account is computed as a percentage of the total of suburban expense in Accounts 308 to 328 inclusive, using the percentage that obtains between these accounts for the total of the three operating divisions, for passenger service expense.

None of this expense is included in the out of pocket cost.

[fol. 606j] Sheet 8 of 15

Account 308—Steam locomotives—Repairs

Road Service

Computed by multiplying the locomotive miles in suburban service by the average system cost per locomotive in 1951 for the particular class of locomotive used.

Yard Service—Elgin

Computed as for road locomotives.

Yard Service—Western Avenue

The cost of repairing steam locomotives used in switching passenger cars is computed on a locomotive-mile basis and is the total amount accounted for as passenger service expense in the Chicago Terminal for this account. This expense is apportioned to suburban service in the ratio that switching locomotive-hours devoted to suburban service is of the total switching hours, based upon a study made by the Superintendent.

This expense is included in the out of pocket cost.

Account 311—Other (Diesel) locomotives—Repairs

Yard Service—Western Avenue

The cost of repairing Diesel locomotives used in switching passenger cars is developed and apportioned to suburban service as explained under Account 308.

This expense is included in the out of pocket cost.

Account 317—Passenger train car—Repairs

The cost of repairing suburban passenger train cars is the actual cost of shop and running repairs made to such cars.

This expense is included in the out of pocket cost.

Account 326—Work equipment—Repairs

Computed as a percentage of the total maintenance of way and structure expense, except Account 266, for suburban service, using the percentage that obtains between the same accounts for the total of the three operating divisions, for passenger service expense.

This is not included in the out of pocket cost.

Account 331—Equipment—Depreciation

This is the actual amount charged to operating expenses for the locomotives and cars used in suburban service at rates approved by the Interstate Commerce Commission.

This is not included in the out of pocket cost.

[fol. 606k] Sheet 9 of 15

Account 332—Injuries to persons

333—Insurance

334—Stationery and printing

335—Other expenses

The amount for each of these accounts is computed as a percentage of the total of the suburban expense in Accounts 308 to 328 inclusive, using the percentage that obtains between these accounts for the total of the three operating divisions, for passenger service expense.

This is not included in the out of pocket cost.

CHICAGO UNION STATION COMPANY

Estimate of Operating Expenses Assignable to Suburban Service

January to June 1952

Inclusive

Line No.	Account Numbers (1)	Description (2)	Total Operating Expenses (3)	Fully Distributed Cost: Other Than Direct Train Service % (4)	Other Than Direct Train Service Amount (5)	Through Service % (6)	Through Service Amount (7)	Suburban Service % (8)	Suburban Service Amount (9)	Out-of-Pocket Cost Symbol (10)	Out-of-Pocket Cost Amount (11)
		MAINTENANCE OF WAY AND STRUCTURES:									
1	201	Superintendence	$ 27,415	50	$ 13,707	70	$ 9,596	30	$ 4,112		$ -
2	202-220	Roadway Maintenance	73,328	-	-	70	51,325	30	21,996	(a)	18,330
3	227-A	Station and Office Buildings:									
4	227 1	Plumbing and Heating	10,053	50	5,027	70	3,518	30	1,508		-
5	2	Lighting	4,313	50	3,171	70	2,220	30	952	(b)	476
6	3	Ventilating	7,593	50	3,750	70	2,650	30	1,139		-
7	4	Elevators	2,776	50	1,388	70	972	30	416		-
8	5	Painting and Decorating	13,081	50	6,541	70	4,578	30	1,962	(b)	981
9	6	All Other Repairs	30,088	50	15,044	70	10,531	30	4,513	(b)	2,257
10	7	Refrigeration - Fred Harvey	4,131	100	4,131	-	-	-	-		-
11	8	Power sub-station apparatus	2,225	90	2,002	70	156	30	67		-
12	227-B	Mail Terminal-(basement and track level)	23,045	-	-	100	23,045	-	-		-
13	227-C	Headhouse - (Rented space)	54,230	100	54,230	-	-	-	-		-
14		Total Account - 227	170,773	-	95,340	-	64,876	-	10,557		3,714
15	229	Roadway Buildings	227	-	-	70	159	30	68	(a)	57
16	247	Communication Systems	2,710	-	-	70	1,897	30	813		-
17	249	Signals and Interlockers	43,722	-	-	70	30,609	30	13,117	(e)	4,529
18	253	Power Plants	3,137	80	2,510	70	439	30	188	(c)	157
19	257	Power Transmission Systems	4,366	80	3,493	70	611	30	262	(c)	218
20	266	Road Property-Depreciation, Other Than Power Plant	282,978	Actual	49,766	Actual	202,894	Actual	30,318	(d)	30,318
21		Road Property-Depreciation, Power Plant	15,666	80	12,533	70	2,193	30	940	(c)	783
22	271	Small Tools and Supplies	1,626	-	-	70	1,138	30	488	(a)	407
23	272	Removing Snow, Ice and Sand	7,766	-	-	70	5,436	30	2,330	(a)	1,942
24	273	Public Improvements - Maintenance	28,365	-	-	70	19,856	30	8,509		-
25	274	Inj es to Persons	2,990	-	-	70	2,093	30	897	(b)	224
26	275	Insurance:									
27	A	Station	345	-	-	70	242	30	103	(b)	26
28	B	Headhouse - (rented space)	345	100	345	-	-	-	-		-
29	C	Mail Terminal (basement - track level)	142	-	-	100	142	-	-		-
30	E	Miscellaneous (all other)	195	-	-	70	136	30	59	(b)	15
31	F	Steam Lines	19	-	-	70	13	30	6		-
32	G	Public Liability	250	-	-	70	175	30	75	(a)	63
33		Total Account - 275	1,296	-	345	-	708	-	243		104
34	276	Stationery and Printing	140	-	-	70	98	30	42	(b)	11
35	277	Other Expenses	64	-	-	70	45	30	19	(b)	5
36	278	Maintaining joint tracks, yards and other facilities-Dr.	1,303	-	-	70	912	30	391		-
		Total Maintenance of Way and Structures	649,667	-	177,694	-	376,683	-	95,290		60,799

See page 4 for footnotes

Mileage Propn at 44.82% 42,709 47,750

CHICAGO UNION STATION COMPANY

Line No.	Account Numbers (1)	Description (2)	Total Operating Expenses (3)	Fully Distributed Cost: Other Than Direct Train Service % (4)	Other Than Direct Train Service Amount (5)	Through Service % (i) (6)	Through Service Amount (7)	Suburban Service % (i) (8)	Suburban Service Amount (9)	Out-of-Pocket Cost Symbol (10)	Out-of-Pocket Cost Amount (11)
1		MAINTENANCE OF EQUIPMENT:									
2	301	Superintendence	$ 6,312	80	$ 5,050	70	$ 883	30	$ 379		$ -
3	304	Power Plant Machinery	21,527	80	17,222	70	3,014	30	1,291	(c)	1,076
4	305	Shop and power plant machinery-Depreciation	12,096	80	9,677	70	1,693	30	726	(c)	605
5	332	Personal Injuries	75	-	75	-	-	-	-		-
6	333	Insurance	78	80	62	70	11	30	5	(c)	4
7	334	Stationery and printing	38	80	30	70	6	30	2	(c)	2
8	335	Other expenses	64	80	51	70	9	30	4	(c)	3
9		Total Maintenance of Equipment	40,190	-	32,167	-	5,616	-	2,407		1,690
10		TRAFFIC:			Miles Prop at 44.82%				1,079		.758
11	353	Advertising	135	-	-	100	135	-	-		-
12		TRANSPORTATION. - RAIL LINE									
13	371	Superintendence	5,607	50	2,803	70	1,963	30	841		-
14	373	Station Employees:									
15	A	General help - station	249,426	-	-	70	174,598	30	74,828	(f)	5,001
16	B	General help - mail terminal	23,088	-	-	100	23,088	-	-		-
17	C	Parcel room	11,186	-	-	100	11,186	-	-		-
18	D	Ticket department	122,641	-	-	90	110,377	10	12,264	(f)	9,885
19	E	Baggage department	121,469	-	-	100	121,469	-	-	(f)	3,644
20	F	Mail Handlers	711,510	-	-	100	711,510	-	-	(f)	9,529
21	G	Headhouse - (Rented space)	106,037	100	106,037	-	-	-	-		-
22	H	Redcaps	156,609	-	-	100	156,609	-	-		-
23		Total Account - 373	1,501,966	-	106,037	-	1,303,837	-	87,092		28,059
24	376	Station Supplies and Expenses:									
25	A	General - station	127,057	-	-	70	88,940	30	38,117	(g)	2,541
26	B	General - mail terminal	24,212	-	-	100	24,212	-	-		-
27	C	Parcel Room	354	-	-	100	354	-	-		-
28	D	Ticket department	3,496	-	-	90	3,146	10	350	(g)	280
29	E	Baggage department	3,633	-	-	100	3,633	-	-	(g)	109
30	G	Mail and Baggage trucks and tractors	29,960	-	-	100	29,960	-	-	(g)	300
31	H	Refrigeration - Fred Harvey	2,615	100	2,615	-	-	-	-		-
32	I	Headhouse - (Rented space)	19,714	100	19,714	-	-	-	-		-
33	J	Redcap service	1,369	-	-	100	1,369	-	-		-
34		Total Account - 376	212,410	-	22,329	-	151,614	-	38,467		3,230
35	379	Yard switch and signal tenders	65,114	-	-	52	33,859	48	31,255		-
36	389	Yard supplies and expenses	5,219	-	-	52	2,714	48	2,505		-
37	390	Operating Joint Yards & Terminals-Dr.	1,166	-	-	52	606	48	560		-
38	405	Crossing protection	6,866	-	-	52	3,570	48	3,296		-

See page 4 for footnotes

[fol. 609]

Line No.	Account Numbers (1)		Description (2)	Total Operating Expenses (3)	Fully Distributed Cost: Other Than Direct Train Service % (4)	Other Than Direct Train Service Amount (5)	Through Service % (i) (6)	Through Service Amount (7)	Suburban Service % (i) (8)	Suburban Service Amount (9)	Out-of-Pocket Symbol (10)	Out-of-Pocket Amount (11)
1	410		Stationery and Printing:									
2		A	Parcel Room	$ 345	-	$ -	100	$ 345	-	$ -		$ -
3		B	Baggage department	1,606	-	-	100	1,606	-	-	(g)	49
4		C	Ticket department	1,200	-	-	70	840	30	360	(g)	96
5		D	General	837	-	-	70	586	30	251	(g)	17
6		E	Redcap service	3,524	-	-	100	3,524	-	-		-
7			Total Account - 410	7,512	-	-	-	6,901	-	611		162
8	411		Other expenses	135	-	-	70	95	30	40	(h)	3
9	414		Insurance	180	-	-	70	126	30	54	(h)	4
10	416		Damage to Property	103	-	-	70	72	30	31		-
11	419		Loss and Damage - (Baggage)	510	-	-	100	510	-	-		-
12			Loss and Damage - (Parcel)	298 Cr.	-	-	100	298 Cr.	-	-		-
13			Loss and Damage - (Redcap)	683	-	-	100	683	-	-		-
14	420		Injuries to persons	19,556	-	-	70	13,689	30	5,867	(h)	392
15			Total Transportation	1,826,729	-	131,169	-	1,524,941	-	170,619		31,850
16			MISCELLANEOUS OPERATIONS:			Milw. Prop'n at 44.82%				76,471		14,276
17	445		Producing Power Sold:									
18		A	Steam	184,103	100	184,103		-		-		-
19		B	Electricity - Mail Terminal	2,047	100	2,047		-		-		-
20		C	Electricity - Head House	9,690	100	9,690		-		-		-
21			Total Miscellaneous Operations	195,840	-	195,840		-		-		-
22			GENERAL:									
23	451		Salaries and expenses of General Officers	5,448								
24	452		Salaries and expenses of Clerks & Attendents	27,914								
25	453		General office supplies and expenses	1,122								
26	454		Law expenses	3,540								
27	455		Insurance	-								
28	456		Relief department expenses	1,650								
29	457		Pensions	3,696								
30	458		Stationery and printing	1,181								
31	459		Valuation expenses	-								
32	460		Other expenses	250								
33			Total General	44,801	-	-	70	31,361	30	13,440		-
34						Milw. Prop'n at 44.82%				6,024		-
35			Total Operating Expenses	$2,757,362	-	$536,870	-	$1,938,736	-	$281,756		$ 94,339
36						Total Milw. Prop'n				176,283		42,283
37												
38												
39	See page 4 for footnotes											
40												
41												

CHICAGO UNION STATION COMPANY

Line No.		
1	(a)	25% of total - based on time-space study of station tracks
2	(b)	Represents 25% of 30% of total: (30% being valuation of Concourse, Train Sheds, Platforms and Tracks)
3	(c)	Represents 25% of 20% of total: (20% being the proportion of power assigned to Concourse, Train Sheds, Platforms, Tracks and Headhouse)
4	(d)	Based upon 25% of valuation of Concourse, Train Sheds and Platforms
5	(e)	Based upon number of Interlocker & Signal units that could be released if no suburban service
6	(f)	Department heads' estimates of reductions in force if no suburban service
7	(g)	Based upon station labor
8	(h)	Based upon total of other transportation expenses
9	(i)	70% and 30% - Proportions of road and suburban cars with locomotives counted as 2 cars
10		90% and 10% - Division of Ticket Department between Road and Suburban
11		52% and 48% - Proportions of Road and Suburban trains
12		

13	Proportion of Suburban Cars	
14		G.M.&O. .95%
15		C.B.&Q. 51.83%
16		C.M.St.P.&P. 44.82%
17		Penn. 2.40%
18		Total 100.00%
19		
20		

Office of Auditor
August 15, 1952

[fol. 620]

EXHIBIT No. 23

Exhibit No. 23

Witness Gaethria

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATISTICS OF SUBURBAN OPERATION IN THE CHICAGO AREA
SEPTEMBER TO DECEMBER 1954 INCLUSIVE

Line No.	Items (a)	Sept.-Dec. 1954 Inclusive (b)
1	1. Route Miles Operated:	
2	(a) Chicago-Elgin	36.87
3	(b) Chicago-Walworth	73.66
4	(c) Total Route Miles	110.53
5	2. Road Miles Used:	
6	(a) Chicago-Pacific Junction	5.55
7	(b) Pacific Junction-Elgin	31.32
8	(c) Pacific Junction-Rondout	26.89
9	(d) Rondout-Walworth	41.22
10	(e) Total Road Miles Used	104.98
11	3. Number of Stations (In addition to Union Station & Western Avenue):	
12	(a) Chicago-Elgin Line	20
13	(b) Chicago-Walworth Line	24
14	(c) Total Number of Stations	44
15	4. Number of Trains Per Day in Both Directions (Excluding Thru Trains):	
16	(a) Chicago-Elgin Line:	
17	(b) Monday thru Friday (Excluding holidays)	28.0
18	(c) Saturdays	22.0
19	(d) Sundays and Holidays	10.0
20	(e) Chicago-Walworth Line:	
21	(f) Monday thru Friday (Excluding holidays)	26.0
22	(g) Saturdays	16.0
23	(h) Sundays and Holidays	10.0
24	(i) Total Number of Trains Per Day	46.3
25	5. Number of Passengers Carried:	
26	(a) Commutation and multiple ride tickets	1,313,484
27	(b) Other Suburban (One Way and Round Trip)	332,276
28	(c) Total Passengers Carried	1,645,760
29	6. Number of Passenger Miles:	
30	(a) Commutation and multiple ride tickets	31,566,900
31	(b) Other Suburban (One Way and Round Trip)	5,985,751
32	(c) Total Passenger Miles	37,552,651
33	7. Train Miles	252,731
34	8. Locomotive Unit Miles	258,025
35	9. Car Miles	1,151,106
36	Averages:	
37	Per Train Mile:	
38	Revenues (Including Mail, Express, etc.)	$ 2.46
39	Operating Expenses and Taxes: Fully Distributed Basis	$ 4.88
40	Out-of-Pocket Basis	$ 3.44
41	Per Car Mile:	
42	Revenue (Including Mail, Express, etc.)	$ .54
43	Per Passenger Mile:	
44	Commutation and multiple ride ticket Passenger Revenue (Per	
45	Commutation Passenger Mile)	$ .0147
46	Other Suburban Passenger Revenue (Per Other Suburban Passenger	
47	Mile)	$ .0241
48	All Suburban Passenger Revenue (Per Suburban Passenger Mile)	$ .0162
49	Per Revenue Passenger:	
50	Average Haul - Miles	22.82
51	Per Train:	
52	Number of Cars	4.55
53	Number of Revenue Passengers	149
54	Per Car:	
55	Number of Revenue Passengers	32.62

[fol. 621] EXHIBIT No. 24

Exhibit 24

NOTES RE UNION STATION EXHIBIT

(a) 27% of total - based on time-space study of station tracks

(b) Represents 27% of 30% of total: (30% being valuation of Concourse, Train Sheds, Platforms and Tracks)

(c) Represents 27% of 20% of total: (20% being the proportion of power assigned to Concourse, Train Sheds, Platforms, Tracks and Headhouse)

(d) Based on 27% of valuation of Concourse, Train Sheds and Platforms.

(e) Based upon number of Interlocker & Signal units that could be released if no suburban service

(f) Department heads' estimates of reductions in force if no suburban service. Same percentages of fully distributed operating expense taken in determining out-of-pocket expense as were used by Union Station Company in 1952.

(g) Based on Station Labor (Acct. 373-A) 2.00%

(h) Based upon total of other Transportation Expenses.

(i) Basis of percentage allocations between Through and Suburban Stations:
(1) 70% and 30% - Proportions of through and suburban cars, with steam locomotives counted as two cars, and each diesel unit counted as one car.

(2) 90% and 10% - Division of ticket department between Through and Suburban

(3) 98% and 4% - Proportions of Through and Suburban Trains.

(j) Allocated on same rate as in 1952.

(k) Number of Suburban Cars of each railroad using Union Station:

	Number	Percent
Gulf, Mobile & Ohio	1,538	.6%
Chicago, Burlington & Quincy	121,914	54.77
Chicago, Milwaukee, St. Paul & Pacific	93,982	42.22%
Pennsylvania	5,153	2.31%
Total	[illegible]	100.00%

(l) Total number of cars using Union Station - 766,863

[fol. 622]

Pro. Ex._____
(Page 1)

ESTIMATE OF OPERATING EXPENSES OF CHICAGO UNION STATION
ASSIGNABLE TO SUBURBAN SERVICE FOR 1954
AND COMPUTATION OF S.M.S&P & P'S SHARE THEREOF

Account Number	Description	Total Operating Expenses (Pet.Ex.14, Sh. 2-4, Col.(4))	FULLY DISTRIBUTED COST: Other Than Direct Train Service Per Cent	Other Than Direct Train Service Amount	Through Service Per Cent of Balance (i)	Through Service Amount	Suburban Service Per Cent of Balance (i)	Suburban Service Amount	OUT-OF-POCKET COST: Suburban Service	Suburban Service Amount
	MAINTENANCE OF WAY AND STRUCTURES									
201	Superintendence	$ 35,366	50%	$ 17,683	70%	$ 12,374	30%	$ 5,309	-	-
202	Roadway maintenance	15,948	-	-	-	-	-	-	-	-
212	Ties	2,523	-	-	-	-	-	-	-	-
214	Rails	5,048	-	-	-	-	-	-	-	-
216	Other track material	36,055	-	-	-	-	-	-	-	-
218	Ballast	748	-	-	-	-	-	-	-	-
220	Track laying and surfacing	64,979	-	-	-	-	-	-	-	-
	Total Accounts 202-220	$ 129,093	-	-	70%	$ 90,365	30%	$ 38,728	(a) 25% of Total	$ 32,273
227-A	Station and Office Building									
227-1	Plumbing & heating	25,677	50%	12,838	70%	8,988	30%	3,851	-	-
227-2	Lighting	9,763	50%	4,881	70%	3,416	30%	1,464	(b)25% of 30%of Total	366
227-3	Ventilating	14,714	50%	7,357	70%	5,150	30%	2,207	-	-
227-4	Elevators	4,506	50%	2,253	70%	1,577	30%	676	-	-
227-5	Painting & decorating	36,226	50%	18,113	70%	12,679	30%	5,434	(b)25% of 30%of Total	1,358
227-6	All other repairs	67,503	50%	33,752	70%	23,626	30%	10,126	(b)25% of 30%of Total	2,532
227-7	Refrigeration - Fred Harvey	6,421	100%	6,421	-	-	-	-	-	-
227-8	Power sub-station apparatus	33,823	90%	30,440	70%	2,368	30%	1,015	-	-
227-B	Mail terminal(basement & track level)	64,336	-	-	100%	64,336	-	-	-	-
227-C	Headhouse (rented space)	44,706	100%	44,706	-	-	-	-	-	-
229	Roadway buildings	41	-	-	70%	29	30%	12	(a) 25% of Total	10
247	Communications systems	1,619	-	-	70%	1,131	30%	488	-	-
249	Signals & interlockers	75,896	-	-	70%	53,127	30%	22,769	(e)(j) 1.04% of Total	789
253	Power plants	10,447	80%	8,358	70%	1,462	30%	627	(a)25% of 20%of Total	522
257	Power transmission lines	12,475	80%	9,980	70%	1,747	30%	748	(a)25% of 20%of Total	624
266	Road Property - Depreciation	596,272	(j) 17.99%	105,236	(j) 71.70%	426,961	(j) 10.71%	64,075	(d)(j)10.71% of Total	64,075
271	Small tools & supplies	4,520	-	-	70%	3,164	30%	1,356	(a) 25% of Total	1,130
272	Removing snow, ice & sand	11,577	-	-	70%	8,104	30%	3,473	(a) 25% of Total	2,894
273	Public improvements - Maintenance	43,798	-	-	70%	30,659	30%	13,139	-	-
274	Injuries to persons	3,324	-	-	70%	2,327	30%	997	(b)25% of 30%of Total	249
275	Insurance									
A	Station	762	-	-	70%	533	30%	229	(b)25% of 30% of Total	57
B	Headhouse (rented space) level	762	100%	762	-	-	-	-	-	-
C	Mail terminal (basement & track)	287	-	-	100%	287	-	-	-	-
E	Miscellaneous	409	-	-	70%	287	30%	122	(b)25% of 30%of Total	31
F	Steam lines	39	-	-	70%	27	30%	12	-	-
G	Public liability	-	-	-	-	-	-	-	-	-
276	Stationery and printing	499	-	-	70%	349	30%	150	(b)25% of 30%of Total	38
277	Other expenses	626	-	-	70%	438	30%	188	(b)25% of 30%of Total	47
278	Maintaining joint tracks,etc.	Dr. 3,084	-	-	70%	2,159	30%	925	-	-
279	Maintaining joint tracks, etc.	Cr. (16,654)	-	-	70%	(11,658)	30%	(4,996)	-	-
	TOTAL MAINT RANCE OF WAY	$1,243,913		$312,780		$ 795,016		$176,116		$106,995

118 32 V

(P 418)

Account Number	Description	Total Operating Expenses	FULLY DISTRIBUTED COST						OUT-OF-POCKET COST	
			Other Than Direct Train Service		Through Service		Suburban Service		Suburban Service	
			Per Cent	Amount	Per Cent of Balance	Amount	Per Cent of Balance	Amount		Amount
	MAINTENANCE OF EQUIPMENT									
301	Superintendence	$ 15,042	80%	$ 12,034	70%	$ 2,106	30%	$ 902	-	$ -
304	Power plant machinery	49,656	80%	39,725	70%	6,952	30%	2,979	(e)25% of 20%Total	2,483
305	Shop and power plant - depreciation	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30%	1,452	(e)25% of 20%Total	1,210
332	Injuries to persons	176	100%	176	-	-	-	-	-	-
333	Insurance	2,478	80%	1,98[illegible]	70%	347	30%	148	(e)25% of 20%Total	124
334	Stationery and printing	160	80%	128	70%	22	30%	10[illegible]	(e)25% of 20%Total	8
335	Other expenses	688	80%	498	70%	87	30%	37	(e)25% of 20%Total	31
	Total maintenance equipment	92,326		$ 73,897		12,901		$ 5,528		$ 3,856
	TRAFFIC									
353	Advertising	145	-	-	100%	145	-	-	-	-
	TRANSPORTATION									
371	Superintendence	13,542	50%	6,771	70%	4,740	30%	2,031	-	-
373	Station employees									
A	General help - station	553,800	-	-	70%	387,660	30%	166,140	(f)	11,076
B	General help - mail terminal	49,808	-	-	100%	49,808	-	-	-	-
C	Parcel room	13,105	-	-	100%	13,105	-	-	-	-
D	Ticket office	232,[illegible]48	-	-	90%	209,023	10%	23,[illegible]25	(f)	14,719
E	Baggage department	237,463	-	-	100%	237,463	-	-	(f)	7,124
F	Mail handlers	1,381,076	-	-	100%	1,381,076	-	-	(f)	18,904
G	Headhouse (rented space)	291,999	100%	291,999	-	-	-	-	-	-
H	Redcaps	291,789	-	-	100%	291,789	-	-	-	-
376	Station supplies and expenses									
A	Station - general	262,836	-	-	70%	183,985	30%	78,851	(g)	5,257
B	Mail terminal - general	40,640	-	-	100%	40,640	-	-	-	-
C	Parcel room	538	-	-	100%	538	-	-	-	-
D	Ticket department	7,985	-	-	90%	7,187	10%	798	(g)	160
E	Baggage department	7,202	-	-	100%	7,202	-	-	(g)	144
G	Mail and baggage trucks	67,716	-	-	100%	67,716	-	-	(g)	1,354
H	Refrigeration - food dairy	5,683	100%	5,683	-	-	-	-	-	-
I	Headhouse (rented space)	39,955	100%	39,955	-	-	-	-	-	-
J	Redcap service	2,861	-	-	100%	2,861	-	-	-	-
379	Yard switch & signal towers	140,958	-	-	52%	73,298	48%	67,660	-	-
389	Yard supplies and expenses	10,874	-	-	52%	5,654	48%	5,220	-	-
390	Operation of joint yards, etc.	CR. 2,131	-	-	52%	1,108	48%	1,023	-	-
391	Operation of joint yards, etc	CR. (17,674)	-	-	52%	(9,190)	48%	(8,484)	-	-
395	Crossing protection	14,587	-	-	52%	7,585	48%	7,002	-	-
440	Stationery and printing									
A	Parcel room	35	-	-	100%	35	-	-	-	-
B	Baggage department	722	-	-	100%	722	-	-	(g)	14
C	Ticket department	3,660	-	-	70%	2,562	30%	1,098	(g)	73
D	General	2,748	-	-	70%	1,924	30%	824	(g)	55
E	Redcaps	7,436	-	-	100%	7,436	-	-	-	-

(P. 419)

Account Number	Description	Total Operating Expenses	FULLY DISTRIBUTED COST						OUT-OF-POCKET COST	
			Other Than Direct Train Service		Through Service		Suburban Service		Suburban Service	
			Per Cent	Amount	Per Cent of Balance	Amount	Per Cent of Balance	Amount		Amount
	TRANSPORTATION - continued									
411	Other expenses	$ 630	-	$	70%	$ 441	30%	$ 189 (h)		$ 11
414	Insurance	2,024	-	-	70%	1,417	30%	607 (h)		35
415	Casualty, wrecks	4,321	-	-	70%	974	30%	417 (j)		367
416	Damage to property	158	-	-	100%	158	-	-		-
419	Loss and damage									
	Baggage	726	-	-	100%	726	-	-		-
	Parcel Cr	433	-	-	100%	433	-	-		-
	Mailcap	1,844	-	-	100%	1,844	-	-		-
420	Injuries to persons	52,558	-	-	70%	36,791	30	15,767 (h)		920
	TOTAL Transportation	$3,694,621		$ 274,408		$3,017,845		$ 362,368		$ 63,835
	MISCELLANEOUS OPERATIONS									
445	Producing power sold									
A	Steam	364,566	100%	364,566	-	-	-	-		-
B	Electricity (mail terminal)	4,517	100%	4,517	-	-	-	-		-
C	Electricity (headhouse)	25,267	100%	25,267	-	-	-	-		-
	TOTAL Miscellaneous	$ 394,350		$ 394,350						
	GENERAL EXPENSES									
451	Salaries & expenses- general officers	11,087	-	-	-	-	-	-		-
452	Salaries & expenses-clerks & attend'ts	61,710	-	-	-	-	-	-		-
453	General office supplies & expense	2,126	-	-	-	-	-	-		-
454	Law expenses	2,698	-	-	-	-	-	-		-
455	Insurance	146	-	-	-	-	-	-		-
456	Relief department expenses	3,370	-	-	-	-	-	-		-
457	Pensions	11,734	-	-	-	-	-	-		-
458	Stationery and printing	1,772	-	-	-	-	-	-		-
460	Other expenses	5,969	-	-	-	-	-	-		-
	TOTAL General	$ 109,732		-	70%	$ 76,814	30	$ 32,918		-
	TOTAL UNION STATION EXPENSE	$5,486,089		$1,055,435		$3,856,421		$ 574,232		$ 174,686 186,016
	Amount of Union Station Expense for Suburban Service attributable to C.M.St.P. & P on basis used by A. B. Olson (42.22%) (4)	-	-	-		-	-	$ 42,441		73,436 73,751
	Deduction of Items Not Constituting Out-of-pocket expense									
	Depreciation Accts. 266 and 305	-	-	-	-	-	-	-		$ 64,963
	Mail & baggage Accts. 373 E and F 376 K and Q, and 410 B	-	-	-	-	-	-	-		27,142
	TOTAL DEDUCTIONS									$ 92,105
	C.M.St.P. & P Percentage of Deductions (42.22%)									$ 38,886
	Net out-of-pocket expense (Exclusive of payroll Taxes)									$ 34,865

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[fol. 626] EXHIBIT No. 26

PRO. EX. 26

Ficher

COMPARISON OF PRESENT AND PROPOSED FARES ON C.M.St.P.& P. RR. WITH FARES OF OTHER CHICAGO SUBURBAN RAILROADS USING DIESEL LOCOMOTIVES

I.
[illegible] PARK

Type of Ticket	C.M.St.P & P Harlem (6.1 mi)		Burlington Cicero Ave (6.9mi)	Rock Island Englewood (6.6 mi)
	Present	Proposed	Present	Present
One-way	20 cents	25 cents	20 cents	17 cents

II.
MIDDLE DISTANCE
(Less than 21 Miles)

Type of Ticket	C.M.St.P & P Bensenville (17.4 mi)		Burlington Hinsdale (16.9mi)	Rock Island Robbins (17.2 mi)
	Present	Proposed	Present	Present
	(Cents per mile)		(Cents per mile)	
One-way	2.59	3.10	2.60	2.73
Round trip	2.44	2.87	2.37	2.47
10-ride	2.44	2.87	2.37	2.47
25-ride	2.24	2.87	2.18	2.28
12-ride (weekly)	1.71	2.42	—	1.74
46-ride (monthly)	1.61	2.25	1.79	1.45

III.
LONG DISTANCE

Type of Ticket	C.M.St.P & P				Burlington	Rock Island
	Present		Proposed		Present	Present
	Elgin (36.8 mi)	Fox Lake (49.5mi)	Elgin (36.8mi)	Fox Lake (49.5mi)	Aurora (38mi)	Joliet (40.2 mi)
	(Cents per mile)		(Cents per mile)		(Cents per mile)	
One-way	2.55	2.53	3.21	3.23	2.55	2.36
Round trip	2.31	2.27	2.92	3.22	2.30	2.18
10-ride	2.31	2.27	2.92	2.93	2.30	2.13
25-ride	2.12	2.09	2.92	2.93	2.12	2.00
12-ride (weekly)	1.27	1.16	1.63	1.43	—	1.16
46-ride (monthly)	1.19	1.09	1.53	1.34	1.19	1.09

[fol. 627] EXHIBIT No. 27

PFD. EX. 27
Fisher

POPULATION OF CITIES AND VILLAGES
SERVED BY C.M.St.P.& P. R.R.

NORTH LINE

	1940	1950	Population According To Latest Census	Date of Latest Census
Cook County, Illinois				
Niles	2,168	3,587	6,883	9/22/53
Morton Grove	2,010	3,926	7,427	3/10/54
Golf	158	258	323	1/25/54
Glenview	2,500	6,142	10,057	4/14/53
Techny	600*	600	600	1950
Northbrook	1,265	3,348	6,013	4/13/54
Lake County, Illinois				
Deerfield	2,283	3,288	4,188	8/5/52
Bannockburn	179	249	249	1950
Lake Forest	6,885	7,819	7,819	1950
Rondout	204*	350	350	1950
Libertyville	3,930	5,425	6,561	6/16/54
Grays Lake	1,182	1,970	2,704	4/23/54
Round Lake**	769*	4,301	4,301	1950
Long Lake	160	2,637	2,637	1950
Ingleside	150*	150	150	1950
Fox Lake	1,110	2,238	2,238	1950
McHenry County, Illinois				
Spring Grove	209	269	269	1950
Solon Mills	100*	100	100	1950
Hebron	627	696	696	1950
Walworth County, Wisconsin				
Zenda	100*	100	100	1950
Walworth	875	1,137	1,137	1950
TOTAL POPULATION	27,474	48,590	64,802	
Total Population of Cities and Villages That Had a Census After 1950	15,496	27,944	44,156	

* Rand-McNally's Commercial Atlas and Marketing Guide - 1947 Edition for 1940 figures, and 1952 Edition for 1950 figures.

** Includes: Round Lake, Round Lake Park, Round Lake Beach

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[fol. 628] EXHIBIT No. 28

PFO. EX. 28
Fisher

POPULATION OF CITIES AND VILLAGES SERVED BY C.M.St.P.& P. R.R.

WEST LINE

	1940	1950	Population According To Latest Census	Date of Latest Census
Cook County, Illinois				
Elmwood Park	13,689	18,801	21,554	9/10/54
River Grove	3,301	4,839	7,070	3/26/54
Franklin Park	3,007	8,899	12,517	2/19/54
Mannheim	120*	120	120	1950
DuPage County, Illinois				
Bensenville	1,869	3,754	3,754	1950
Wooddale	738	1,857	2,308	9/1/54
Itasca	787	1,274	2,091	6/8/54
Medinah	160*	160	160	1950
Roselle	694	1,038	1,639	12/27/54
Ontarioville	240*	297	297	1950
Cook County, Illinois				
Bartlett	608	716	716	1950
Spaulding	25*	25	25	1950
Cook & Kane Counties, Ill.				
Elgin	38,333	44,223	44,223	1950
TOTAL POPULATION	63,571	86,003	96,474	
Total Population of Cities and Villages That Had a Census After 1950	22,216	36,708	47,179	

* Rand-McNally's Commercial Atlas and Marketing Guide - 1947 Edition for 1940 figures, and 1952 Edition for 1950 figures.

PRO. EX. 29

Fisher

CASH VALUE AND COST OF TRANSPORTATION FURNISHED TO NON-REVENUE PASSENGERS APPORTIONED BETWEEN SUBURBAN AND NON-SUBURBAN EMPLOYEES

I.

STATISTICAL DATA

A. Relationship Between Total Number of Passengers Carried in 1954 and Non-Revenue Passengers (Assuming number and allocation of non-revenue passengers to be same as in 1953)

Line		Number	Per Cent of Total
1	Number of revenue passengers carried in 1954 (Pet. Ex. 11)	4,869,064	89.64%
2	Number of non-revenue passengers (Pet. Ex. 24[1] and Ill.C.C. Ex.43[2] in Ill.C.C. Doc. 40486)	562,908	10.36%
3	Total number of passengers carried	5,431,972	100.00%

B. Distribution of Non-Revenue Passengers Between Suburban and Non-Suburban Employees (From Ill. C.C.Ex. 43[2] in Ill. C.C. Doc. 40486)

4	Total number of non-revenue passengers (line 2)	562,908	10.36%
5	Number employed in suburban service(Ill.C.C. Ex.43[2], Ill.C.C. Doc.40486)	13,965	1.34%
6	Number employed in through or freight or other non-suburban service (Ill.C.C.Ex.43[2], Ill.C.C.Doc. 40486)	469,843	9.02%

II.

COMPUTATION OF CASH VALUE OF TRANSPORTATION FURNISHED BY SUBURBAN LINES TO NON-SUBURBAN EMPLOYEES

7	Total passenger revenue (from Pet. Ex. 12	$1,796,231
8	Cash value of transportation furnished to all non-revenue passengers (10.36%, line 4)	$ 186,090
9	Cash value of transportation furnished to suburban employees (1.34%, line 5)	24,062

Pre. Ex. No. 30

Fisher

SUBURBAN OUT-OF-POCKET EXPENSE
As Claimed By Petitioner, Eliminating Accounts Petitioner Previously Claimed Included No Out-Of-Pocket Expense

Acc't No.	All Accounts Claimed by Petitioner in 1952 to Include Out-of-Pocket Expense (Ex. 25, I.C.C. 40486)	1954 (I) Out-of-Pocket Cost Sep-Dec. 1954 (x.13, Int. C.C. 31742)	1954 (II) Yearly Out-of-Pocket Cost (4 times 3)	1952 First 6 months as claimed by Petitioner, extended to yearly basis (Ex.25 I.C.C. 40486)
	Maintenance of Way & Structures			
227	Station & Office Buildings		(a) $ 15,409	$ 27,346
233	Fuel Stations		(a) 167	174
235	Shops & Enginehouses		(a) 8,326	40
278	Maintaining Joint Tracks, etc., Dr.		(a) 3,764	3,340
279	Maintaining Joint Tracks, etc., Cr.		(133)	
	Payroll tax		(b) 677	—
	Total maintenance of Way		$ 22,210	
	Maintenance of Equipment			
308,311	Locomotive Repairs - Road	$ 60,853	$ 182,559	$ 42[illegible],356
	Locomotive Repairs - Yard	1,726	5,178	6,158
317	Passenger Train Car Repairs	80,117	240,351	268,000
	Payroll tax	4,479	13,437	—
	Total Maintenance of Equipment		$ 441,525	
	Traffic			
353	Timetables	$ 1,191	$ 3,573	$ 2,904
	Transportation			
373	Station Employees	$ 1,755	$ 5,265	$ 6,528
376	Station Supplies & Expenses	580	1,740	2,214
378	Yard Conductors & Brakemen	8,194	24,582	34,438
380	Yard Enginemen	5,797	17,391	22,668
382	Yard Switching Fuel	1,198	3,594	3,702
385	Water for Yard Locomotives	25	75	740
386	Lubricants for Yard Locomotives	45	135	50
387	Other Supplies for Yard Locomotives	36	108	260
388	Enginehouse Expense - Yard	1,359	4,077	9,624
392	Train Enginemen	119,231	357,693	318,908
394	Train Fuel	77,596	232,788	470,994
397	Water for Train Locomotives	573	1,719	19,852
398	Lubricants for Locomotives	4,310	12,930	11,466
399	Other Supplies for Locomotives	862	2,586	10,378
[illegible]	Enginehouse Expense - Train	38,737	116,211	339,716

[fol. 631] EXHIBIT No. 31

Pro. Ex. 31
Hammond

TABULATION OF UNION STATION EXPENSES
FOR THE YEAR 1952
ATTRIBUTABLE TO CMStP&P SUBURBAN SERVICE

	Union Station Expenses Attributable to Suburban Service of Four Occupying Roads		Union Station Expenses Attributable to CMSTP&P Suburban Service (44.82% of Total)	
	On Fully Distributed Basis	On Out-of-pocket Basis	On Fully Distributed Basis	On Out-of-Pocket Basis
OPERATING EXPENSES FOR FIRST SIX MONTHS OF 1952 (as allocated to Suburban Service by A.B.Olsen, Auditor, Chicago Union Station Co. from Pro.Ex. C-1 and C - Pet. Exs. 29, 30 - Ill.C.C.40486, incorporated in Pro. Ex. 21)				
Payroll Taxes	$ 22,323	$ 5,648*	$ 10,005	$ 2,531*
Interest	51,303	51,303	22,994	22,994
Property Taxes	29,895	29,895	13,399	13,399
Less: Concessions Revenue (Cr.)	(13,014)	(13,014)	(5,833)	(5,833)
Operating Expenses	281,756	94,339	126,283	42,483
Total for first 6 mos., 1952	$ 372,263	$ 168,171	$ 166,848	$ 75,574
Extended for full year, 1952	$ 744,526	$ 336,342	$ 333,696	$ 151,148

DEDUCTION FOR ITEMS NOT PROPERLY INCLUDED IN OUT-OF-POCKET EXPENSE ATTRIBUTABLE TO CMSTP&P SUBURBAN SERVICE (First 6 mos., 1952)

Acct. No.	Description	
266	Depreciation - Road Property (44.82% of $30,316)	$ 13,586
266	Depreciation - Power Plant (44.82% of $783)	353
305	Depreciation - Power Plant Mach. (44.82% of $605)	271
373F	Mail Handling -(Discontinued in 1952) 44.82% of $9,529)	4,271
	Total	$ 18,481

Additional Deductions (From Pro. Ex.C - Pet.Ex.29, Ill.C.C.40486 Incorporated in Pro. Ex. 21)

Interest	$ 22,994
Property Taxes	13,399
Total deductions from suburban out-of-pocket expense-CMSTP&P (first 6 mos.1952)	$ 54,874
Total deductions for full year, 1952	$ 109,748

Net out-of-pocket expense of Chicago Union Station allocable to CMSTP&P Suburban Service for the year 1952 $ 41,400

* Ratio of payroll tax on out-of-pocket basis to same expense on fully distributed basis is 25.30% — See Note on Pro. Ex. 32.

[fol. 632] EXHIBIT No. 32

Pet. Ex. 32

Hammond

CHICAGO UNION STATION COMPANY

STATEMENT SHOWING PAYROLL TAXES FOR 1954
AND ALLOCATION TO MILWAUKEE SUBURBAN SERVICE

Line		
1	Total payroll taxes for 1954 (Sh. 5, Pet. Ex 14)	$ 238,270
2	Assignable to Through and Suburban Service (58.39% of Line 1)*	$ 139,126
3	Assignable to Suburban Service (32.38% of Line 2)*	$ 45,049
4	Milwaukee Road's proportion of amount assignable to Suburban Service:	
	(a) On a fully-distributed basis (42.22% of Line 3)**	$ 19,020
	(b) On an out-of-pocket basis (25.30% of Line 4(a))***	$ 4,812

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* Percentages in Lines 2 and 3 are taken from Pro. Ex. C-1 (Pet. Ex. 29) in Ill. C.C. Docs. 40466, which is incorporated in Pro. Ex. 21 in this case.

** Percentage in Line 4(a) is taken from Pro. Ex. 24.

*** Percentage in Line 4(b) (25.30%) equals the ratio of out-of-pocket payroll expense to fully allocated payroll expense of suburban Union Station operations, as testified to by Ralph S. Stephenson, Comptroller of C.U.S.T.P.R.R. for the year 1952, as affirmed by him in this case.

[fol. 633] EXHIBIT No. 33

Pro. Ex. 33

Hammond

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R.

SUMMARY OF UNION STATION EXPENSE - 1954
ALLOCABLE TO MILWAUKEE SUBURBAN SERVICE

	On Fully Distributed Basis	On Out-of-Pocket Basis
Net Union Station operating expense, exclusive of payroll taxes (from Pro. Ex. 24)	$ 242,441	$ 39,650
Payroll taxes (from Pro. Ex. 32)	19,020	4,812
TOTAL Union Station Expense Allocable to Milwaukee Road Suburban Service	$ 261,461	$ 44,462

COMPUTATION OF CASH VALUE OF TRANSPORTATION
FURNISHED BY SUBURBAN TRAINS TO NON-SUBURBAN EMPLOYEES

7	Total passenger revenue (from Pet. Ex. 12	$1,736,231
8	Cash value of transportation furnished to all non-revenue passengers (10.36%, line 4)	$ 166,090
9	Cash value of transportation furnished to suburban employees (1.34%, line 5)	24,069
10	Cash value of transportation furnished by suburban trains to non-suburban employees (9.02%, line 6)	$ 162,021

III.

COST CHARGED TO SUBURBAN SERVICE FOR FURNISHING
TRANSPORTATION TO NON-SUBURBAN EMPLOYEES

		On Fully Distributed Basis (Pet. Ex. 12 & 13)	On Out-of-pocket Basis	
			On Petitioner's Basis (Pet. Ex. 12 & 13)	On Basis As Corrected (Pro. Ex. 30)
11	Total Costs	$3,041,766*	$2,270,161*	$1,984,394
12	Less head-end expense of 3.2%	97,331	72,645	63,501
13	Total costs of passenger service	$2,944,435	$2,197,516	$1,920,893
14	Costs allocable to transportation of non-revenue passengers (10.36%)	$ 305,043	$ 227,663	$ 199,197
15	For suburban employees (1.34%)	39,425	29,447	25,738
	Costs charged to suburban service for transporting non-suburban employees (9.02%)	$ 265,618	$ 198,216	$ 173,459

* Maintenance of way costs from Ex. 12; other costs computed by applying factor of 3 to figures in Ex. 13.

** Protestant's Exs. 2/ and

[fol. 629]

EXHIBIT No. 29

	Payroll tax	4,479	13,432	—
	Total Maintenance of Equipment		$ 441,525	
	Traffic			
353	Timetables	$ 1,191	$ 3,573	$ 2,904
	Transportation			
373	Station Employees	$ 1,755	$ 5,265	$ 6,528
376	Station Supplies & Expenses	580	1,740	2,214
378	Yard Conductors & Brakemen	8,194	24,582	34,438
380	Yard Engineers	5,797	17,391	22,662
382	Yard Switching Fuel	1,198	3,594	3,702
383	Water for Yard Locomotives	25	75	740
386	Lubricants for Yard Locomotives	45	135	50
387	Other Supplies for Yard Locomotives	36	108	260
388	Enginehouse Expense - Yard	1,359	4,077	9,624
392	Train Enginemen	119,231	357,693	316,902
394	Train Fuel	77,596	232,788	470,954
397	Water for Train Locomotives	573	1,719	19,852
396	Lubricants for Locomotives	4,310	12,930	11,466
399	Other Supplies for Locomotives	862	2,586	10,378
400	Enginehouse Expense - Train	38,737	116,211	339,716
401	Trainmen	154,719	464,157	443,658
402	Train Supplies & Expense	63,867	191,601	179,670
414	Operating Joint Tracks & Facilities	1,974	5,922	5,922
416	Damage to Property	—	—	700
419	Loss and Damage - Baggage	32	96	134
420	Injuries to Persons	2,971	8,913	3,728
	Payroll tax	19,008	57,024	—
	Total Transportation		$1,506,607	
	General			
432	Salaries & Expenses of Clerks	$ 2,644	$ 7,932	$ 7,104
	Payroll tax	149	447	—
	Total General		$ 8,379	
	TOTAL PAYROLL TAX		$ 1,194,284	$ 95,340
	TOTAL MAINTENANCE EXPENSES		$1,920,907	$2,120,106
	Less head-end expenses (3.2%)		$ 63,501 497	$ 87,040
	TOTAL PASSENGER OPERATING EXPENSES		$1,920,907 1,920.797	$2,633,066

NOTES:

(a) Maintenance of Way expense taken for full year 1954, from Exhibit 12.

(b) Pay-roll tax figured as same proportion of total Maintenance of Way out-of-pocket expense as shown by petitioner's Exhibit 12.

[fol. 634] EXHIBIT No. 34

Pro. Ex. 34
(Sheet 1 of 4)

Hammond

SUMMARY STATEMENT OF REVENUES, EXPENSES AND OUT-OF-POCKET INCOME OF SUBURBAN PASSENGER OPERATION IN 1952 AND 1954

(Based on Petitioner's figures with adjustments as noted below and on Sheets 3 and 4 attached)

Line		1952	1954
1	Revenues (Sheet 2, attached)	$1,724,316	$1,865,053
2	Expenses on fully distributed basis: (Sheet 3, attached) (Sheet 4, attached)	$4,041,535	3,303,277 ~~$5,044,429~~
3	Expenses on out-of-pocket basis: (Sheet 3, attached) (Sheet 4, attached)	$2,761,506	$2,028,756
4	Out-of-pocket loss* on operation of suburban service on basis of Petitioner's figures as adjusted (line 1 minus line 3)	($1,037,190)	($ 163,701)*
5	Adjustment for non-revenue passengers: Add credit for cost of carrying non-suburban employees improperly included in out-of-pocket expense of suburban service (Pro. Ex. 29)	$ 173,263	$ 173,263
6	Deficit* or net income on out-of-pocket basis, from operation of suburban service	($ 863,927)*	$ 9,562

NOTES:

* Loss or deficit figures are indicated by parentheses.

[fol. 635]

Pro. Ex. 34
(Sheet 2 of 4)

CHICAGO SUBURBAN SERVICE REVENUES
1952 AND 1954

Revenues - 1952

Suburban Service Revenue
(Pet. Corrected Ex. 25,
Ill.C.C. Doc. 40486 -
incorporated in Pet
Ex. 21)

First 6 months, 1952	$ 862,158
Extended on yearly basis	$1,724,316

Revenues - 1954

Suburban Service Revenue
(Pet. Ex. 13)

Last 4 months, 1954	$ 621,685
Extended on yearly basis	$1,865,055

Pro. Ex. 34
(Sheet 3 of 4)

EXPENSES OF CHICAGO SUBURBAN SERVICE
1952

Operating Expenses for 1952, Other Than Union Station Expense (From Pet. Corrected Ex. 25, Ill.C.C. 40486 - incorporated in Pro. Ex. 21)	Fully Distributed	Out-of-Pocket
Total passenger railway operating expense (first 6 mos., 1952)	$1,740,475	$1,312,363
Payroll Taxes	60,847	47,690
Property Taxes	52,597	—
	$1,853,919	$1,360,053
Extended on yearly basis	$3,707,838	$2,720,106
Union Station Expense for 1952		
Union Station Expense apportioned to CMSTP&P Suburban Service (Pro. Ex. 31)	$ 333,696	$ 41,400
TOTAL EXPENSE apportioned to CMSTP&P Suburban Service	$4,041,535	$2,761,506

Pro. Ex. 34
(Sheet 4 of 4)

EXPENSES OF CHICAGO SUBURBAN SERVICE
1952

	FULLY DISTRIBUTED EXPENSE	OUT-OF-POCKET EXPENSE	
	As Claimed By Petitioners (Pet. Exs.12 & 13) Extended on Yearly Basis	As Claimed By Petitioners (Pet. Exs.12 & 13) Extended on Yearly Basis	Excluding those accounts Petitioner previously claimed included as out-of-pocket expense (Pro. Ex.30) Extended on Yearly Basis
Maintenance of Way (Pet. Ex. 12)	$ 330,126	$ 93,913	$ 22,210
Maintenance of Equipment (Pet. Ex. 13)	672,714	647,865	441,525
Traffic (Pet. Ex. 13)	3,573	3,573	3,573
Transportation (Pet. Ex. 13)	1,754,958	1,517,031	1,506,607
General (Pet. Ex. 13)	126,615	8,379	8,379
Taxes, other than Payroll (Pet. Ex. 13)	153,780	—	—
TOTAL - yearly basis (Exclusive of Union Station Expense)	$3,041,766	$2,270,161	$1,984,294
	On Basis as Set Forth in Pro Exs. 24 and 32		On Basis as Set Forth in Pro. Ex. 33
Union Station Expense apportioned to CMSTP&P Suburban Service	$ 261,461		$ 44,462
TOTAL EXPENSE apportioned to CMSTP&P Suburban Service	$3,303,227		$2,028,756

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
PASSENGER TRAFFIC DEPARTMENT

SCALE OF PROPOSED C.M.St.P.& P. ONE WAY FARES IN CHICAGO SUBURBAN DISTRICT AS COMPARED WITH THOSE IN EFFECT ON ILLINOIS CENTRAL AND C.S.S.& S.B.

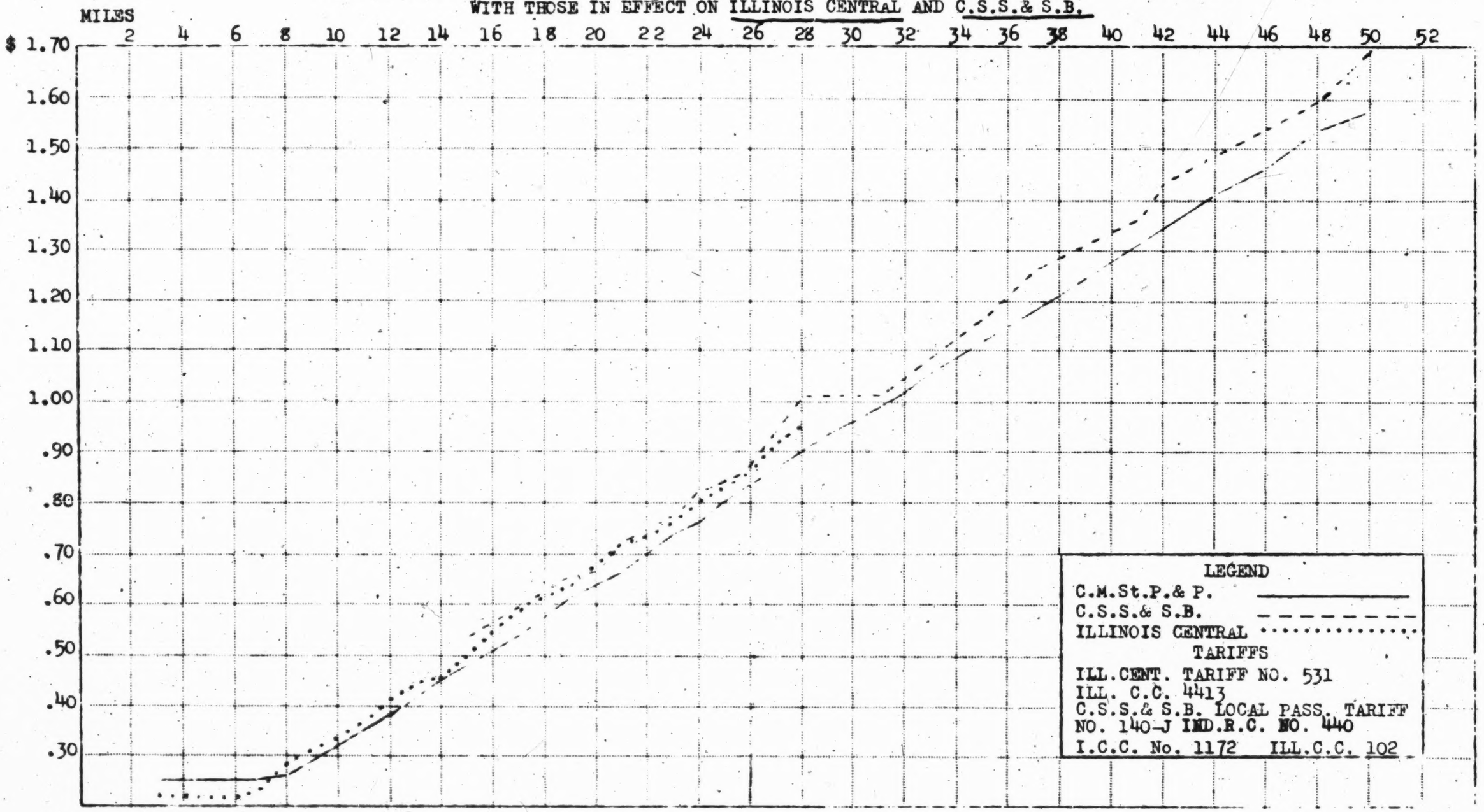


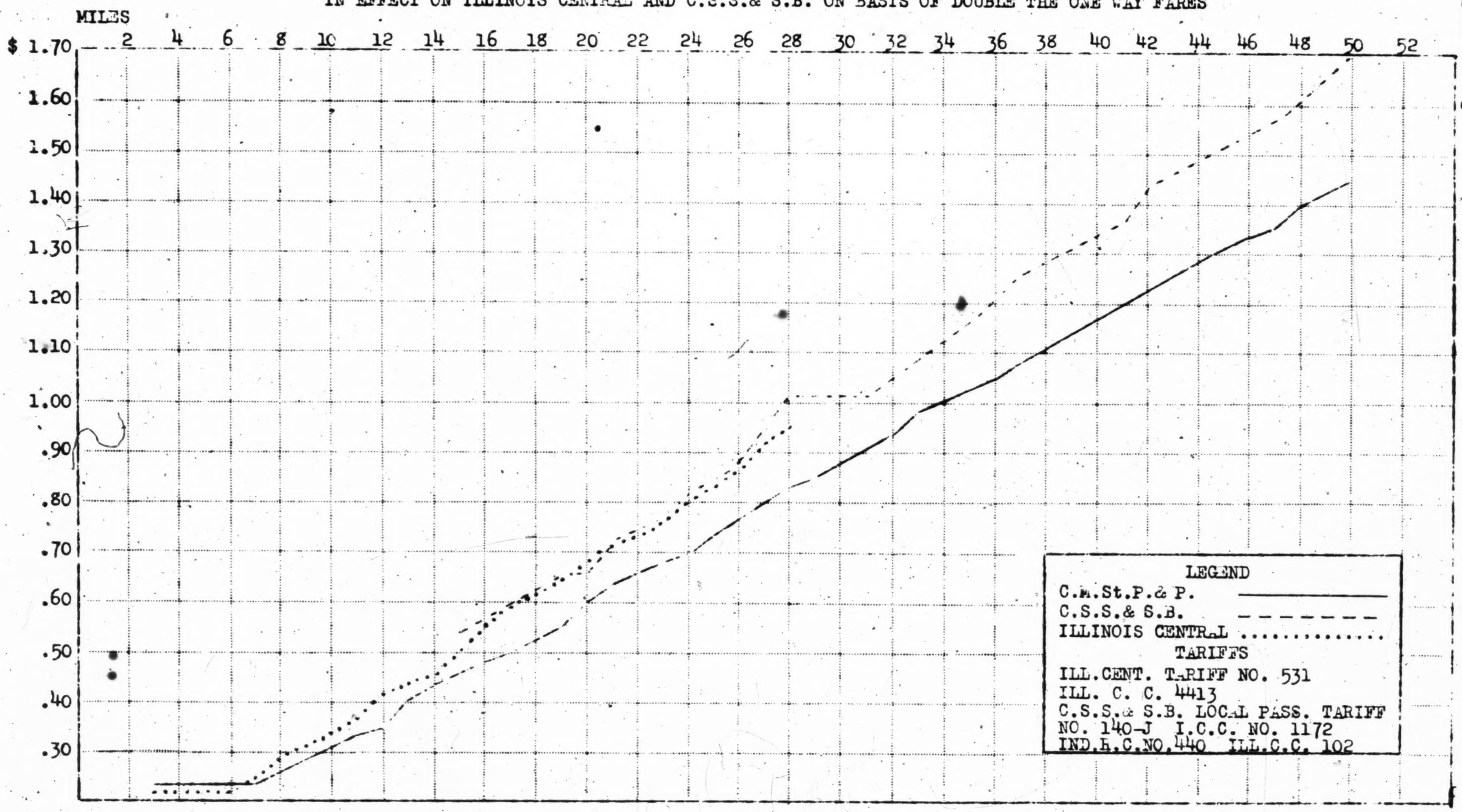
EXHIBIT NO. 35
WITNESS Exhibit No. 85

[fol. 638] 432

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
PASSENGER TRAFFIC DEPARTMENT

I.C.C. DOCKET NO. 31742
EXHIBIT NO. _____
WITNESS _____

SCALE ON A RATE PER RIDE BASIS OF PROPOSED C.M.St.P.& P. ROUND TRIP FARES IN CHICAGO SUBURBAN DISTRICT AS COMPARED TO THOSE IN EFFECT ON ILLINOIS CENTRAL AND C.S.S.& S.B. ON BASIS OF DOUBLE THE ONE WAY FARES



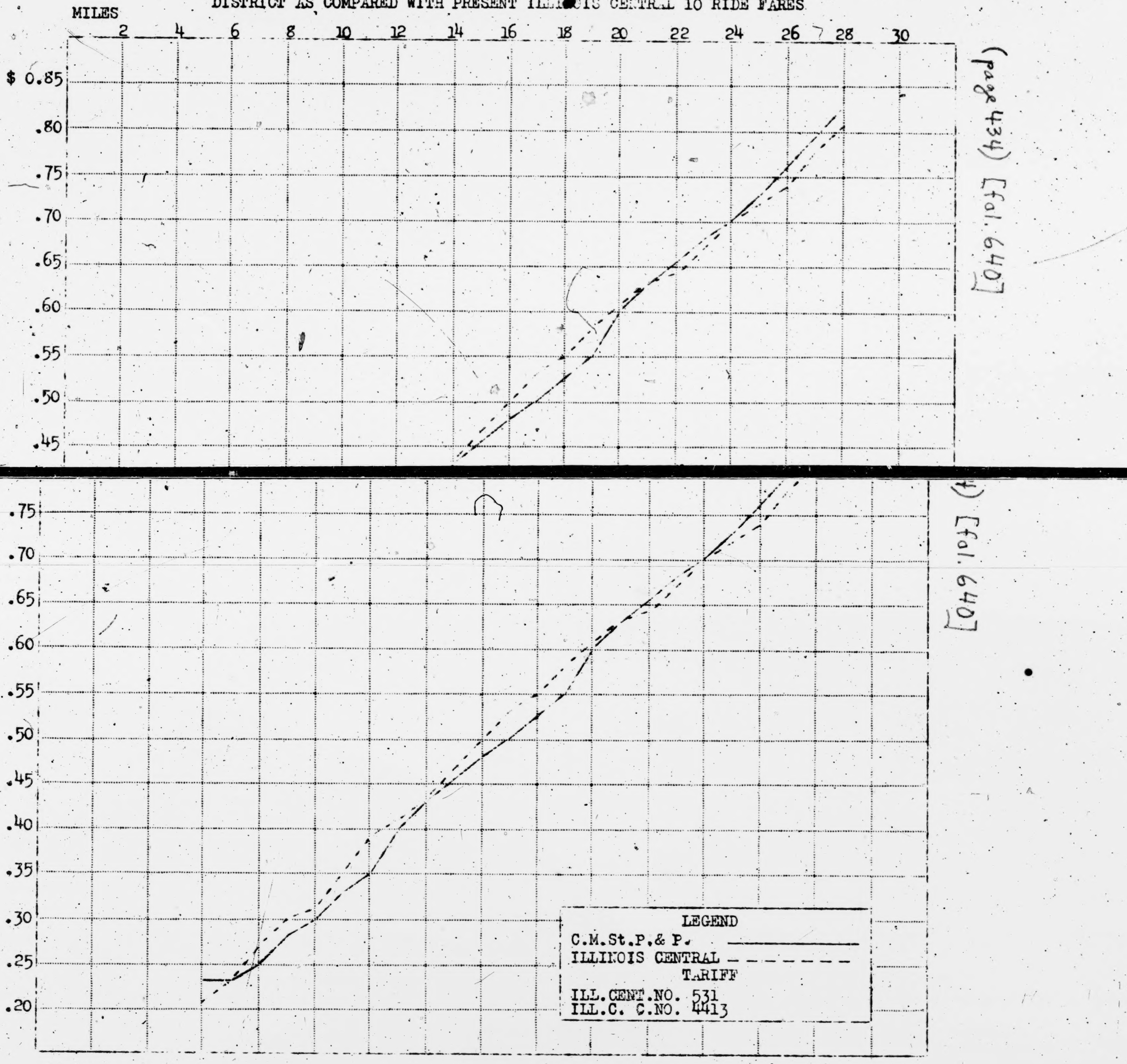
[fol. 639]

433

I.C.C. DOCKET NO. 31742
EXHIBIT NO. _____
WITNESS _____

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
PASSENGER TRAFFIC DEPARTMENT

SCALE ON A RATE PER RIDE BASIS OF PROPOSED C.M.St.P.& P. 10 RIDE FARES IN CHICAGO SUBURBAN DISTRICT AS COMPARED WITH PRESENT ILLINOIS CENTRAL 10 RIDE FARES



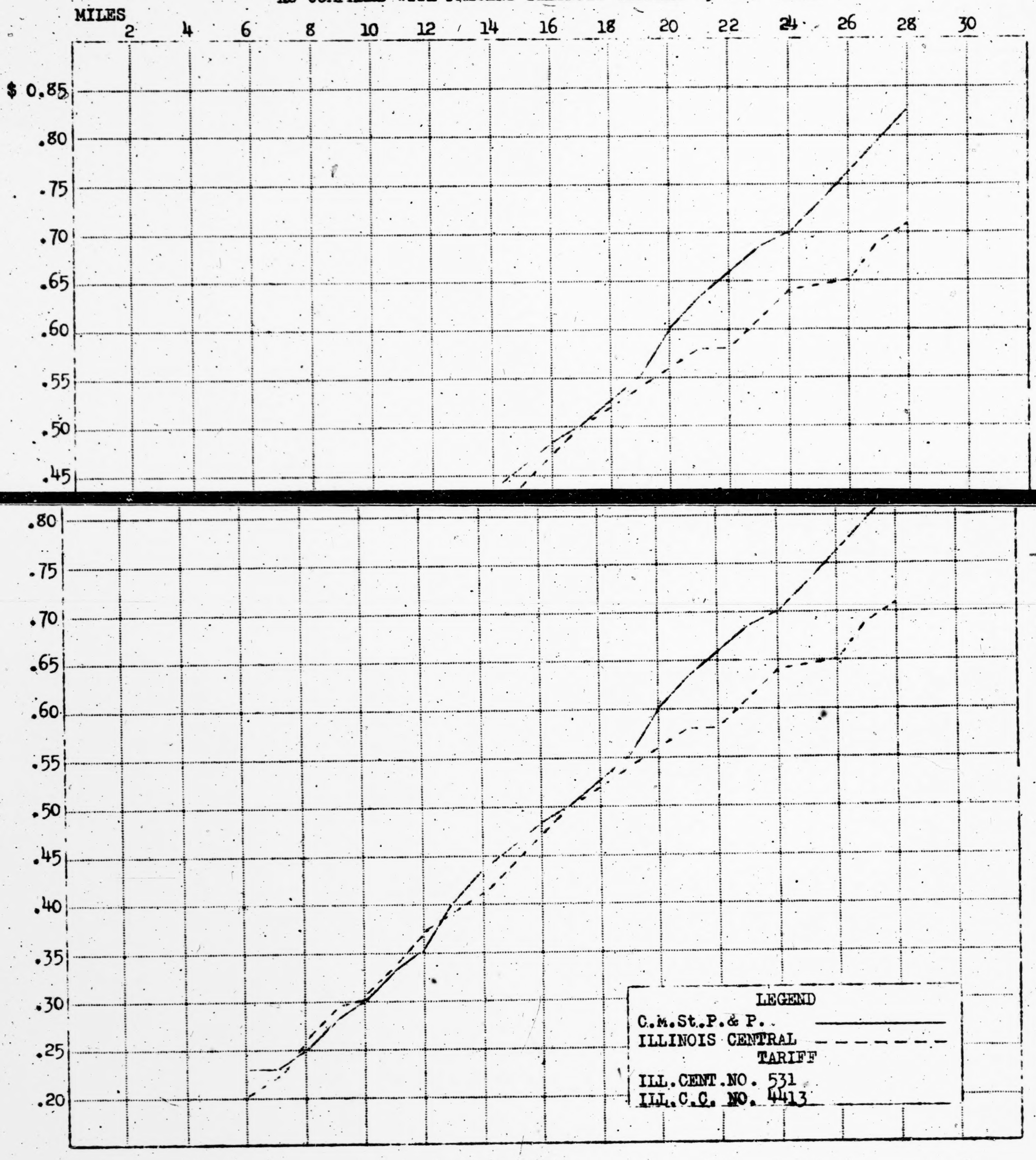
[O49.1 (fol. 64) (page 434)]

I.C.C. DOCKET NO. 31742
EXHIBIT NO. _____
WITNESS _____

[fol. 641]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
PASSENGER TRAFFIC DEPARTMENT

SCALE ON A RATE PER RIDE BASIS OF PROPOSED C.M.St.P.& P. 25 RIDE FARES IN CHICAGO SUBURBAN DISTRICT
AS COMPARED WITH PRESENT ILLINOIS CENTRAL 25 RIDE FARES



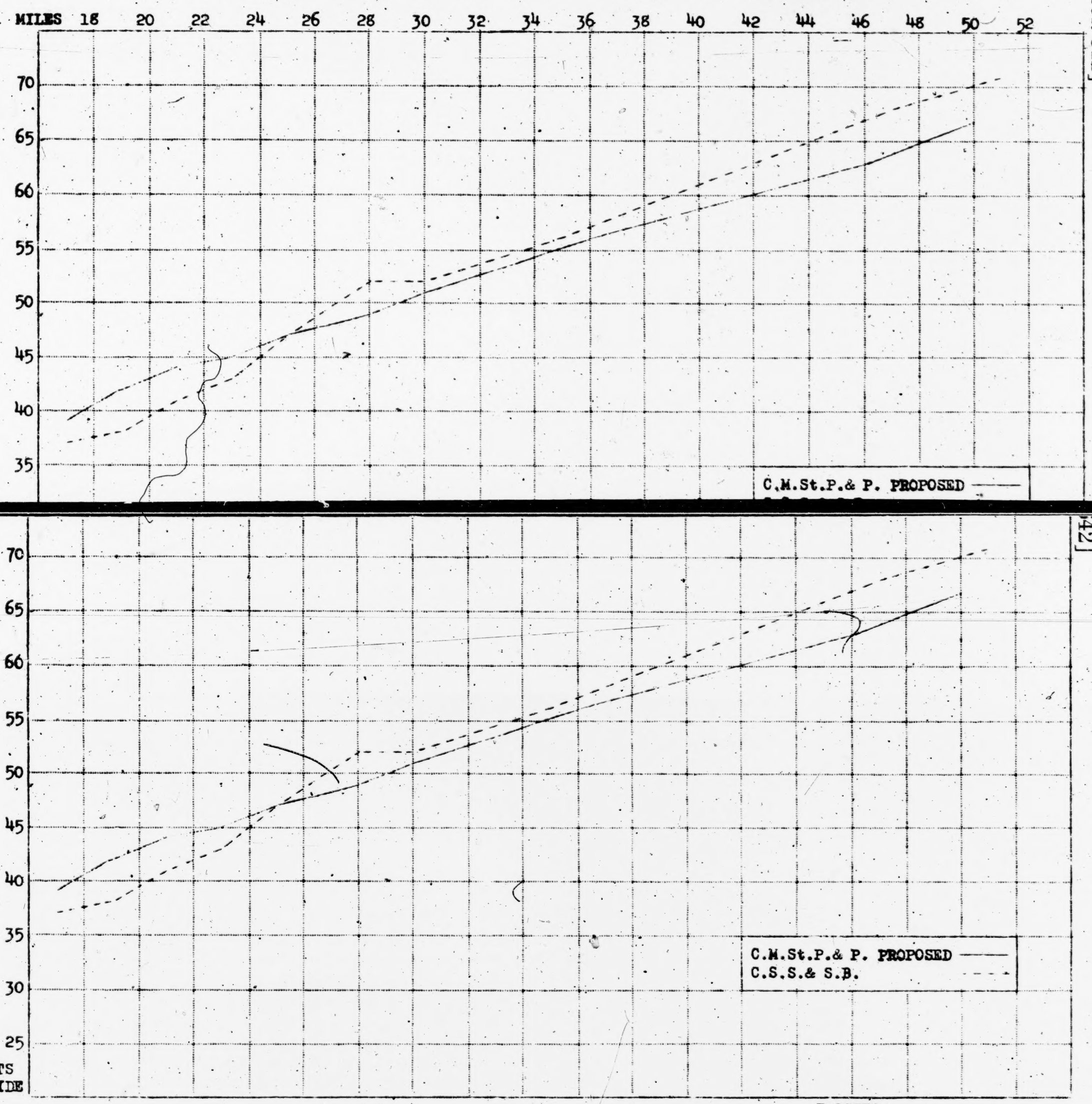
[fol. 643]

435

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
PASSENGER TRAFFIC DEPARTMENT

I.C.C. DOCKET NO. 31742
EXHIBIT NO. _____
WITNESS _____

SCALE ON A RATE PER RIDE BASIS OF PROPOSED C.M.St.P.& P. 46 RIDE FARES IN CHICAGO SUBURBAN DISTRICT AS COMPARED WITH PRESENT C.S.S.& S.B. 44-RIDE FARES



TARIFFS
C.S.S. & S.B. NO. 960-E, I.C.C. NO. (1) 1254, IND.R.C. NO. 485.
NO. 1444-B, ILL.C.C. NO. 114

[fol. 642]

436

642

[fol. 663] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

AFFIDAVIT—Filed April 18, 1956

STATE OF ILLINOIS,
COUNTY OF COOK, *ss.*:

JOHN K. PAIN, being first duly sworn, on oath deposes and says that he is Assistant General Passenger Agent of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called "Milwaukee Road"), with headquarters at Union Station, Chicago, Illinois; that his duties principally involve the study, establishment and publication of passenger fares and tariffs, including commutation fares and that in this capacity he is familiar with the level of passenger fares on the Milwaukee Road and other railroads serving the Chicago suburban area.

Affiant further says that pursuant to Order entered March 2, 1956, by the Interstate Commerce Commission in its Docket No. 31472, the Milwaukee Road has published tariffs reflecting increased fares in the Chicago suburban territory, effective April 20, 1956; that these fares are generally on the same level as permitted by the Illinois Commerce Commission and presently in effect between points [fol. 664] on the Chicago and North Western Railway, which serves parallel and adjacent territory, and on the Chicago, Rock Island and Pacific Railroad in the Chicago suburban area; that representative fares proposed to points on the Milwaukee Road, compared with fares for like distances on the other named railroads, are shown in the exhibit attached hereto.

Affiant further says that in the event the increase in fares sought to be restrained in the above entitled proceeding should for any reason not become effective on April 20, 1956, by virtue of an order of court or otherwise, the loss in additional revenue will thereafter amount to approximately $1,000.00 per day, which loss cannot be recovered

and would result in irreparable damage to the Milwaukee Road.

/s/ John K. Pain

Subscribed and sworn to before me this 17th day of April, 1956.

Margaret H. Nelson, Notary Public.

PROPOSED MILWAUKEE ROAD ONE-WAY, ROUND-TRIP, COMMUTATION AND MULTIPLE RIDE FARES BETWEEN STATIONS IN THE CHICAGO SUBURBAN DISTRICT AS COMPARED WITH EXISTING FARES OF OTHER CARRIERS FOR SIMILAR TRAFFIC

Mileage	Railroad	Station	One-Way	Round Trip	10-Ride Bearer	25-Ride Bearer	12-Ride Weekly	46-Ride Monthly	Unrestricted Monthly
9.0	MILWAUKEE	Mayfair	$ .27	$ .50	$ 2.50	$ 6.25	$ 3.00	$ 11.50	$ 15.00
8.7	C. & N.W.	Jefferson Pk.	.27	.50	2.50	6.25	None	11.50	15.50
9.8	C.R.I.& P.	Gresham	.29	.55	2.75	6.35	None	11.65	12.95
13.4	MILWAUKEE	Franklin Pk.	.40	.75	3.75	8.65	3.85	13.90	15.40
13.3	C. & N.W.	Evanston (Cent. St.)	.39	.75	3.75	8.65	3.85	13.90	15.50
13.7	C.R.I.& P.	Morgan Pk. (111th)	.39	.75	3.75	8.65	3.70	13.30	14.75
20.9	MILWAUKEE	Northbrook	.63	1.15	5.75	13.25	5.10	18.40	20.40
20.7	C. & N.W.	Braeside	.63	1.15	5.75	13.25	5.10	18.40	20.40
20.4	C.R.I.& P.	Oak Forest	.61	1.10	5.50	12.65	4.70	16.85	18.70
28.0	MILWAUKEE	West Lake Forest	.84	1.55	7.75	17.85	5.80	20.90	23.20
28.3	C. & N.W.	Lake Forest	.84	1.55	7.75	17.85	5.80	20.90	23.20
29.6	C.R.I.& P.	Mokena	.89	1.65	8.25	19.00	5.90	21.15	23.50

TARIFF AUTHORITY

C.M.ST.P.& P. Local & Joint No. 397, Ill. C.C. No. 1090 (Supplement No. 5)
" " " " " 405, " " " 1096 (Supplement No. 6)
" " No. 20, I.C.C. No. 9420
C. & N. W. Local & Joint No. 5-9, Ill. C.C. No. 1795 (Supplement No. 5)
" " " " " 9-9, " " " 1796 (" " 5)
" " No. 55-C-4, Ill. C.C. No. 1923 (" " 2)
" " " 56-M-4, " " " 1924 (" " 1)
C.R.I.& P. Local & Joint No. 1-20, Ill. C.C. No. 1043 (Supplements Nos. 1 and 5)
" Suburban Local No. 17, Ill. C.C. No. 1081 (Supplement No. 3)
Western Local & Joint No. 216-4, Ill. C.C. No. 2004 (Supplement No. 18 to I.C.C. No. 5144)

[fol. 667] In United States District Court, Northern District of Illinois, Eastern Division

No. 56-C-681

State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association, Plaintiffs

v.

United States of America, Interstate Commerce Commission, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Defendants.

Order Denying Plaintiff's Motion for a Temporary Restraining Order—Entered April 18, 1956

This cause coming on to be heard this day on motion of plaintiffs for the entry of a temporary restraining order, it appearing to the Court that due and proper notice of the time and place for the presentation of said motion has been served upon the defendants and the Court having examined the Complaint heretofore filed herein and having examined the Motion of plaintiffs for a temporary restraining order and having examined the Affidavit of John K. Pain filed herein by defendant Milwaukee Road in opposition to the motion for temporary restraining order, the Court having heard arguments of counsel and being fully advised in the premises,

[fol. 668] It is, ordered, adjudged and decreed, that plaintiffs' motion for a temporary restraining order be and the same is hereby denied upon the condition that the excess fares to be collected by the defendant Milwaukee Road, from and after April 20, 1956, pursuant to the order of the Interstate Commerce Commission complained of in plaintiffs' Complaint and pending a final determination of this proceeding, be impounded by defendant Milwaukee Road in such a manner that they can be returned to the persons by whom paid in the event that the order of the Interstate Commerce

Commission complained of in plaintiffs' Complaint is finally determined in this proceeding to be invalid.

ENTERED this 18th day of April, 1956.

/s/ Philip L. Sullivan, District Judge.

[fol. 669] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

ORDER DIRECTING ALL DEFENDANTS TO FILE ANSWERS AND SETTING HEARING OF CAUSE—April 18, 1956

IT IS ORDERED by the Court that a rule be and hereby is entered on all defendants to file answers within twenty days from this date and it is

FURTHER ORDERED that this cause be and the same hereby is set for hearing on May 17, 1956 at 10:30 A. M.

[fol. 671] SUMMONS IN A CIVIL ACTION

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action File No. 56C681

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, Plaintiffs

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, Defendants

---

U S atty. 516 N Jackson

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Latham Castle, Attorney General and Harry R. Begley, Special Asst. Attorney General and Tenney, Sherman, Bentley & Guthrie and S. Ashley Guthrie plaintiff's attorneys, whose addresses are, respectively, 160 North LaSalle Street, Chicago 1, Illinois, and 120 South LaSalle Street, Chicago 3, Illinois an answer to the compiaint which is herewith served upon you, within Sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ Roy H. Johnson, Clerk of Court, /s/ Ruth M. Waller, Deputy Clerk.

Date: April 13, 1956 (SEAL OF COURT)

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 672] MARSHAL'S RETURN

NORTHERN DISTRICT OF ILLINOIS

Served this writ, together with copy of complaint, on the within named United States of America, by and through Robert Tieken, United States Attorney for the Northern District of Illinois, at Chicago, Illinois, by leaving copies thereof for him at Room 450 U.S. Courthouse, Chicago, Illinois, his usual place of business with John M. Dzieczic, Chief Clerk, an agent authorized to accept service for him at the same time informing him of the contents thereof. this 17th day of April A.D. 1956.

And by forwarding by Register Mail (Register No. 865299), this 17th day of April A.D. 1956, a copy of said writ together with copy of complaint to the Attorney General, Washington 25, D.C.

And by forwarding by Register Mail (Register No. 865300) this 17th day of April A.D. 1956, a copy of said writ together with copy of complaint to the Interstate Commerce Commission, Washington 25, D.C.

W. W. Kipp, Sr., U. S. Marshal, By: /s/ Wm Raff, Deputy U. S. Marshal.

1 Ser $2.00

[Seal]

No. 56C681

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and CHICAGO, MILWAUKEE ST. PAUL & PACIFIC RAILROAD COMPANY

SUMMONS IN CIVIL ACTION

Returnable not later than 60 days after service.

Latham Castle, Attorney General, Harry R. Begley, Spec. Asst. Attorney General and Tenney, Sherman, Bentley & Guthrie, S. Ashley Guthrie, Attorneys for Plaintiffs.

Postmark Apr 17 1956 Old Post Office Sta. Chicago, Ill.

REGISTERED No. 865300

Value $..... Spec. del'y fee $.....

Fee $ 40 Ret. receipt fee $ 0

Surcharge $..... Rest. del'y fee $.....

Postage $ 57 ☐ Airmail

Postmaster, By (Illegible)

From ICC

To 681

Postmark Apr 17 1956 Old Post Office Sta. Chicago, Ill.

REGISTERED No. 865299

Value $..... Spec. del'y fee $.....

Fee $ 40 Ret. receipt fee $ 0

Surcharge $..... Rest. del'y fee $.....

Postage $ 57 ☐ Airmail

Postmaster, By (Illegible)

From AG

To 681

[fol. 674] In United States District Court, Northern District of Illinois, Eastern Division

[Title omitted]

Order Designating a Three Court Judge—April 23, 1956

The undersigned, Chief Judge of the Court of Appeals for the Seventh Circuit, having been notified by Honorable Philip L. Sullivan, United States District Judge for the Northern District of Illinois, Eastern Division, of an application to enjoin and set aside an order of the Interstate Commerce Commission, and for other relief in the above entitled cause, does hereby, pursuant to Title 28, U.S.C. §§2325 and 2284, designate the Honorable Elmer J. Schnackenberg, Judge of the United States Court of Appeals for the Seventh Circuit, and Honorable Walter J. La Buy, a United States District Judge for the Northern District of Illinois, Eastern Division, to serve with the Honorable Philip L. Sullivan, as members of a three-judge District Court to hear and determine the above designated action or proceeding.

Dated this 23rd day of April, A. D., 1956.

/s/ F. Ryan Duffy, Chief Judge.

[fol. 676] In United States District Court for the Northern District of Illinois, Eastern Division

[Title omitted]

Answer of the United States of America and the Interstate Commerce Commission, Defendants—Filed May 7, 1956

The United States of America and the Interstate Commerce Commission, for their answer to the complaint:

I.

Admit the allegations in paragraphs 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 14 and 15 of the complaint.

II.

Admit the allegations in paragraph 6 except that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called "the Milwaukee Road") is a "public utility" under statutes of the United States and allege that the Milwaukee Road is a "common carrier by railroad" as that term is used in the Interstate Commerce Act (49 U.S.C. 1, et seq.).

[fol. 677] III.

With respect to the allegations in paragraphs 9 and 10, admit that the Milwaukee Road filed a petition under section 13 of the Interstate Commerce Act, and refer to that petition (Exhibit A to the complaint) for a proper interpretation of its terms and purposes.

IV.

Admit the allegations in paragraph 16, except deny that the prescribed fares are on the average approximately 28 per cent over the fares in effect when this suit was filed, and aver that the prescribed increases would average approximately 21 per cent over the fares then in effect.

V.

Admit the allegations in paragraph 17, except the allegation that the Interstate Commerce Commission's order of March 2, 1956, contains a direction that the increased fares be established "without concurrence of the Illinois Commerce Commission," which allegation they deny.

VI.

Deny the allegation in paragraph 18 that the Illinois Commerce Commission has primary jurisdiction over intrastate passenger fares, and allege that the jurisdiction

of the said Commission is limited to the extent that the Interstate Commerce Commission has exclusive jurisdiction to determine whether such fares are unjustly discriminatory against interstate commerce and to prescribe a scale of [fol. 678] fares to remove such discrimination when found to exist; admit that the Milwaukee Road filed a petition with the Illinois Commission seeking authority to discontinue certain suburban trains and to increase suburban fares; neither admit nor deny the remaining allegations in paragraph 18, being without knowledge or information sufficient to form a belief as to the truth thereof.

VII.

Admit the allegations in paragraph 19, except they deny that the order of the Illinois Commission is a final adjudication of the issue as to legality of the proposed increase in fares.

VIII.

Neither admit nor deny the allegations in paragraph 20, being without knowledge or information sufficient to form a belief as to the truth thereof.

IX.

Admit the allegations in paragraph 21, except they deny the allegation that "no like contribution was exacted from interstate or other passenger service," and allege, on the contrary, that the order of the Interstate Commerce Commission did prescribe increases for the interstate portion of the suburban service similar to the increases ordered in intrastate fares.

X.

Deny the allegations in paragraph 22 and refer to the [fol. 679] report and order of the Interstate Commerce Commission for a proper interpretation of their terms.

XI.

Admit the allegations in paragraph 22½.

XII.

Deny the allegations in paragraph 23, and allege that whether the order of the Illinois Commission was in accord with the Milwaukee Road's theory or was supported by the evidence presented or was a proper exercise of the jurisdiction of the Illinois Commission in that proceeding are factors irrelevant in the present action, inasmuch as the orders of the Interstate Commerce Commission now challenged represent a valid exercise by it of jurisdiction to decide questions under Federal statute as to which the Illinois Commission had and has no jurisdiction whatsoever.

XIII.

Deny the allegations in paragraphs 24, 29, 30, 32, 33, 35, 36, 38, 39, 42, 43, 44 and 45.

XIV.

Admit the allegations in paragraphs 25 and 26 that the suburban trains of the Milwaukee Road were operated by steam locomotives during 1952 and 1953 and that dieselization of the trains was completed in September 1954; neither admit nor deny the remaining allegations in the two paragraphs, being without knowledge or information sufficient to form a belief as to the truth thereof.

[fol. 680]

XV.

Deny the allegations in paragraphs 27 and 28, except admit that the Milwaukee Road indicated before the Interstate Commerce Commission that during the year 1954, on an out-of-pocket basis, it had suffered a deficit of $724,511, and that the Commission determined that the total out-of-pocket deficit for that year was $306,038, which figure would have been further reduced if the Interstate Commerce Commission had not properly considered depreciation and maintenance of way as out-of-pocket costs.

XVI.

Deny the allegations in paragraph 31, except admit that the report of the Interstate Commerce Commission dis-

closed that the increased fares prescribed would eliminate the out-of-pocket deficit of $306,038 and result in a contribution to indirect costs and taxes of approximately $77,000 annually.

XVII.

Admit, in answer to paragraph 34, that the report of the Interstate Commerce Commission contains the ading quoted in said paragraph.

XVIII.

Admit the allegation in paragraph 37 as to the finding contained in the report, but deny the allegation that the record does not support that finding.

[fol. 681]

XIX.

Neither admit nor deny the allegations in paragraphs 40 and 41, being without sufficient knowledge or information to form a belief as to the truth thereof, except as to the reports of the Interstate Commerce Commission therein described, to which reference is made for a proper interpretation of their terms.

XX.

Further answering the said complaint, these defendants allege that the findings and conclusions set forth in the Commission's report of November 21, 1955, upon which the orders assailed by plaintiffs are based, were and are, and each of them was and is, fully supported and justified by the evidence submitted in the said proceeding; that in making its report and orders, the Commission considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition brought to its attention by or on behalf of the parties to the proceeding; and that its report and orders were not made either arbitrarily or unjustly, or without substantial evidence to support them, or contrary to the relevant evidence, or in excess of the authority conferred upon the Commission by law; and these defendants deny each of and all the allegations to the contrary contained in the complaint.

[fol. 682] WHEREFORE, having fully answered, these defendants pray that the relief sought herein by the plaintiffs be denied and that their complaint be dismissed.

/s/ James E. Kilday, /s/ Maurice A. Fitzgerald, Attorneys, Department of Justice, Washington 25, D. C.

Stanley N. Barnes, Assistant Attorney General, /s/ R. Tieken, United States Attorney.

Attorneys for United States of America, Defendant.

/s/ Leo H. Pouf, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C.

Robert W. Ginnane, General Counsel.

Attorneys for Interstate Commerce Commission, Defendant.

[fol. 683] CERTIFICATE OF SERVICE (omitted in printing)

[fol. 684] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

ANSWER OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEFENDANT—filed May 8, 1956

Now comes Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation, one of the defendants herein, and in answer to the complaint herein states:

1-5. This defendant admits the allegations of paragraphs 1 through 5 of the complaint.

6. This defendant admits the allegations of paragraph 6 of the complaint, except it denies that it is a public utility as defined in any relevant statute of the United States.

7-8. This defendant admits the allegations of paragraphs 7 and 8 of the complaint.

9. This defendant admits that by its petition the proceeding was instituted before the Interstate Commerce Commission (Docket 31742); but denies that paragraph 9 of the complaint correctly summarizes the material allega-
[fol. 685] tions of said petition.

10. This defendant denies the allegation of paragraph 10 of the complaint that said petition sought an investigation by the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act for the purpose of reviewing and setting aside any order of the Illinois Commerce Commission. On the contrary, this defendant alleges that the purpose of such investigation was to enable the Interstate Commerce Commission to exercise its independent and exclusive jurisdiction to determine whether the intrastate suburban fares of this defendant caused and would continue to cause disadvantage to and undue, unreasonable and unjust discrimination against interstate commerce and shippers in interstate commerce in violation of federal law, *i.e.*, Sections 3(1) and 13(4) of the Interstate Commerce Act. This defendant further alleges that paragraph 10 of the complaint is solely argumentative and irrelevant and should be disregarded.

11. This defendant admits the allegations of paragraph 11 of the complaint.

12. This defendant admits the allegation of paragraph 12 of the complaint that extensive hearings were held by Burton Fuller, Examiner of the Interstate Commerce Commission.

13-15. This defendant admits the allegations of paragraphs 13 through 15 of the complaint.

[fol. 686] 16. This defendant admits that the findings set forth in paragraph 16 of the complaint were made by the Interstate Commerce Commission in its report dated November 21, 1955, and were approved and implemented by the order of said Commission dated March 2, 1956. Defendant alleges, however, that the increases in the fares prescribed by the Interstate Commerce Commission averaged approximately 21%, instead of 28% as alleged in the complaint.

17. This defendant admits the allegations of paragraph 17 of the complaint, except it denies that the order of the Interstate Commerce Commission of March 2, 1956 contains a reference to establishment of prescribed fares without concurrence of the Illinois Commerce Commission.

18. This defendant denies the allegation in paragraph 18 of the complaint that the Illinois Commerce Commission has primary jurisdiction over intrastate passenger fares. This defendant admits that the Illinois Commerce Commission has jurisdiction to fix said fares within certain limitations prescribed by Illinois law, subject, however, to the paramount and exclusive jurisdiction of the Interstate [fol. 687] Commerce Commission to determine whether intrastate passenger fares are in violation of the federal law and to fix said fares to correct such violation. This defendant admits that on July 24, 1952, it filed an application with the Illinois Commerce Commission, but denies that it did so in recognition of any "primary" jurisdiction of the State body, and further denies every allegation in paragraph 18, except as herein specifically admitted.

19. This defendant admits the allegations of paragraph 19 of the complaint, except that it denies that the order of the Illinois Commission is a final adjudication of any issue in any proceeding before any other regulatory agency or any court.

20. This defendant denies the allegations of paragraph 20 of the complaint as a gross distortion of its position before the Illinois Commerce Commission with respect to the propriety of including depreciation and certain maintenance of way expenses. Reference is made to pages 3 and 4 of defendant's reply to exceptions, a part of the record before the Interstate Commerce Commission to be filed herein by plaintiffs, for a true statement of its position with regard to such matters.

21. This defendant admits the allegation in paragraph 21 of the complaint that it included in the case before the Interstate Commerce Commission depreciation charges and maintenance of way expense and that inclusion thereof was approved by that Commission. This defendant further

[fol. 688] admits that the Interstate Commerce Commission prescribed fares which it estimated to be sufficient to make up the out-of-pocket deficit and to make a contribution toward the full cost of the suburban service. This defendant denies that no like contribution was exacted from interstate passenger service, but alleges that, on the contrary, the Commission also prescribed like increases for the interstate portion of the suburban service, and that other passenger service and fares were in no manner in issue in said proceeding.

22. This defendant denies that the mere statement of the Illinois Commerce Commission's findings referred to in paragraph 22 of the complaint constitutes an endorsement thereof by the Interstate Commerce Commission or any admission whatsoever of the propriety of the Illinois Commerce Commission's order or the exercise of its jurisdiction.

22½. This defendant admits that the quotation set forth in paragraph 22½ of the complaint appears in the report of the Interstate Commerce Commission of November 21, 1955, but denies its relevancy herein.

23. This defendant denies the allegation in paragraph 23 of the complaint that the order of the Illinois Commerce Commission was in accord with the theory upon which this defendant presented its case, that said order was supported by the evidence, that the Illinois Commerce Commission [fol. 689] properly exercised its jurisdiction, or that its order must stand, but alleges that the merits or defects of said order are irrelevant. This defendant denies that the Interstate Commerce Commission was without authority to enter the orders entered in this case and alleges that such orders of the Interstate Commerce Commission represent the exercise of jurisdiction in deciding questions under federal law entirely beyond the scope of the jurisdiction of the Illinois Commerce Commission. This defendant denies that it is or was obligated to submit to the Illinois Commerce Commission, or that such Commission has the power to decide, a case involving the lawfulness of rates under the Interstate Commerce Act.

24. This defendant denies the allegation in paragraph 24 of the complaint that any improvement in its operating facilities resulted in any manner from proceedings before the Illinois Commerce Commission, or that there is any necessity or advisability of presenting its case for adjudication by the state body, which has no power to determine the issues raised in this defendant's petition to the Interstate Commerce Commission.

25. This defendant admits the allegation in paragraph 25 of the complaint that in 1952 and 1953 suburban service was operated wholly by steam power, but alleges that any findings of the Illinois Commerce Commission of a million dollar savings through dieselization were entirely conjec-
[fol. 690] tural and not confirmed by actual experience.

26. This defendant admits the allegations of paragraph 26 of the complaint, except it denies that its operating costs under diesel operation are approximately one million dollars less than under steam operation.

27. This defendant denies the allegation in paragraph 27 of the complaint that there is no basis for its claim that it has suffered an out-of-pocket loss of $724,500 from its suburban operations. This defendant denies that the Interstate Commerce Commission made any finding concerning a "cash deficit" or that such term has any meaning whatever in this proceeding. This defendant further alleges that the Interstate Commerce Commission in its findings understated by over $300,000 per year this defendant's out-of-pocket loss. This defendant denies the propriety of the adjustment of its losses for which plaintiffs contend, or that this defendant has little or no out-of-pocket loss from its suburban operations, or that any of the allegations in said paragraph are relevant.

28. This defendant denies that any of the figures set forth in paragraph 28 of the complaint represent anything but a minor portion of its out-of-pocket loss from suburban operations.

29. This defendant denies the allegations of paragraph 29 of the complaint.

[fol. 691] 30. This defendant denies the allegation in paragraph 30 of the complaint that there is no evidence to support the conclusion by the Interstate Commerce Commission that the intrastate fares result in undue, unreasonable and unjust discrimination against interstate commerce.

31. This defendant admits that the report of the Interstate Commerce Commission contains the findings set forth in paragraph 31 of the complaint, but states that the figure of $306,038 is questionable only insofar as it limits this defendant's out-of-pocket loss to this sum.

32. This defendant denies the allegation in paragraph 32 of the complaint that the effect of the proposed increase is to cause the intrastate suburban passenger service to contribute to the deficit of other services or discriminate in any way against intrastate commerce.

33. This defendant denies the allegations of paragraph 33 of the complaint.

34. This defendant admits that the report of the Interstate Commerce Commission contains the finding set forth in paragraph 34 of the complaint.

35-36. This defendant denies the allegations of paragraphs 35 and 36 of the complaint.

37. This defendant denies the allegation in paragraph 37 of the complaint that the record before the Interstate Commerce Commission does not support a finding that the increased suburban fares prescribed therein are just and [fol. 692] reasonable.

38. This defendant denies the allegations of paragraph 38 of the complaint.

39. This defendant denies the allegation of paragraph 39 of the complaint that the evidence does not support the finding of reasonableness of the fares prescribed.

40. This defendant denies the allegation in paragraph 40 of this complaint that the cost of operation of the suburban service with diesel locomotives is approximately

$900,000 less than under its operation by steam locomotives.

41. This defendant denies the inference in paragraph 41 of the complaint that any difference in operating conditions between it and the Chicago and North Western Railway justifies a denial to this defendant of the fares prescribed by the Interstate Commerce Commission.

42. This defendant denies the allegation of paragraph 42 of the complaint that its former fares, or those prescribed by the Interstate Commerce Commission, are more than those charged for the suburban service of the Rock Island Railroad, as shown by affidavit submitted herein on April 18, 1956, during argument before this Court on the issuance of a temporary restraining order. Defendant denies that there is any lack of jurisdiction for the prescribing of increased fares for this defendant by the Interstate Commerce Commission.

43-44. This defendant denies the allegations of paragraphs 43 and 44 of the complaint.

[fol. 693] 45. This defendant denies the allegation in paragraph 45 of the complaint that passengers using its suburban service will be required to pay fares averaging 28% more than present fares or any increase in fares greater than an average of 21%, or that they will suffer irreparable injury.

Wherefore, this defendant prays that the Court deny the relief sought by plaintiffs, and that it enter an order dismissing the complaint at plaintiffs' costs.

/s/ W. J. Quinn, /s/ T. H. Maguire, /s/ Edwin R. Eckersall, /s/ R. K. Merrill, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Defendant.

888 Union Station, Chicago 6, Illinois, CEntral 6-7600.

[fol. 694] Affidavit of Service (omitted in printing)

[fol. 696] In United States District Court for the Northern District of Illinois, Eastern Division

[Title omitted]

Order Upon Agreement of Parties, re Filing of Briefs—May 17, 1956

Upon the agreement of all parties of record, it is ordered:

1. All parties may file briefs on or before May 28, 1956.

2. At the same time, parties may file proposed findings of fact and conclusions of law and a proposed decree.

3. Parties may file reply briefs on or before June 2, 1956.

Enter:

Philip L. Sullivan, Judge

Dated: May 17th, 1956

[fol. 698] In United States District Court, Northern District of Illinois, Eastern Division

[Title omitted]

Notice of and Motion to Amend Complaint—Filed June 4, 1956

To:

Herbert Brownell Attorney General of the United States and Maurice A. Fitzgerald Ass't. Attorney General, United States Department of Justice, Washington 25, D.C.

Robert W. Ginnane General Counsel and Leo H. Pou Associate General Counsel Interstate Commerce Commission Washington 25, D.C.

Robert Tieken United States Attorney, Chicago, Illinois W. J. Quinn and R. K. Merrill 888 Union Station, Chicago, Illinois

PLEASE TAKE NOTICE that on MONDAY, JUNE 4, 1956, at [fol. 699] the opening of court in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorneys for the plaintiffs shall appear before the Honorable Philip Sullivan, Judge of the United States District Court for the Northern District of Illinois Eastern Division, in the courtroom usually occupied by him, or before such other Judge that may be sitting in his place and stead and shall then and there present the motion, a copy of which is attached hereto and served upon you, at which time and place you may appear if you so see fit.

STATE OF ILLINOIS and ILLINOIS COMMERCE COMMISSION, Plaintiffs

By /s/ Latham Castle, Attorney General.
/s/ Harry R. Begley, Special Assistant Attorney General, 160 North LaSalle Street, Chicago, Illinois.

MILWAUKEE ROAD COMMUTERS' ASSOCIATION, Plaintiff

By /s/ Tenney, Sherman, Bentley & Guthrie, Its Attorneys, 120 South LaSalle Street, Chicago 3, Illinois.

[fol. 700] PROOF OF SERVICE (omitted in printing)

[fol. 701] MOTION TO AMEND COMPLAINT—
Filed June 4, 1956

Now come the Plaintiffs by their respective counsel and move the court to amend their complaint in the above entitled action by adding thereto a new paragraph as follows:

17½. That the findings in said report and order of November 21, 1955, are insufficient and inadequate to
[fol. 702] support or justify the exercise of Interstate Commerce Commission authority to prescribe intrastate suburban fares for the Milwaukee Road.

State of Illinois and Illinois Commerce Commission, Plaintiffs

By /s/ Latham Castle, Attorney General.
/s/ Harry R. Begley, Special Assistant Attorney General, 160 North LaSalle Street, Chicago, Illinois.

Milwaukee Road Commuters' Association, Plaintiff

By /s/ Tenney, Sherman, Bentley & Guthrie, Its Attorneys, 120 South LaSalle Street, Chicago 3, Illinois.

[fol. 703] Verification (omitted in printing)

[fol. 705] In United States District Court, Northern District of Illinois, Eastern Division.

No. 56 C 681

Suit under Sec. 1336 Title 28 USC to Set Aside and En., in Enforcement of Order of Interstate Commerce Commission

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State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association, Plaintiffs,

v.

United States of America, Interstate Commerce Commission and Chicago, Milwaukee, St. Paul and Pacific Railway Company, Defendants.

Order Allowing Plaintiffs to Amend Complaint—June 4, 1956

This matter coming on to be heard upon the motion of the plaintiffs to amend their complaint and the court having heard argument of counsel,

IT IS HEREBY ORDERED, and leave is hereby given, to plaintiffs to amend said complaint by the addition of paragraph 14½.

IT IS FURTHER ORDERED that defendants answers stand to the complaint as amended with the allegation of paragraph 14½ of the complaint denied.

ENTERED:

Philip L. Sullivan, Judge.

DATED: June 4th, A.D., 1956.

[fol. 707] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 56 C 681

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Defendants.

Before ELMER J. SCHNACKENBERG, Judge of the United States Court of Appeals for the Seventh Circuit, and PHILIP L. SULLIVAN and WALTER J. LA BUY, District Judges.

OPINION—June 14, 1956

SCHNACKENBERG, *Circuit Judge.* This is an action to set aside and enjoin the enforcement of an order[1] of the Interstate Commerce Commission[2] authorizing the Chicago, Milwaukee, St. Paul and Pacific Railroad Company[3] to put into effect intrastate rates or fares for Chicago area sub-

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1 Entered March 2, 1956, based on report dated November 21, 1955, (297 I. C. C. 353).

2 Herein sometimes referred to as the "interstate commission".

3 Herein sometimes referred to as the "Milwaukee Road".

urban service higher than those authorized by the Illinois Commerce Commission.[4]

[fol. 708] The Milwaukee Road by petition to the interstate commission requested an investigation under §13 (4) of the Interstate Commerce act to determine whether intrastate suburban passenger rates approved by the state commission unjustly discriminated against interstate commerce. It asked that, if found so to discriminate, the rates be adjusted so as to remove the discrimination. The order of the interstate commission which we now consider is based upon its report of November 21, 1955, in which it refers to the Milwaukee Road as "respondent" and Milwaukee Road Commuters' Association as "protestant".

This report states that "on an out-of-pocket basis respondent shows a deficit of $724,511, while protestant shows an income of $9,701. For expenses other than the Union Station, protestant's lower figures are accounted for by the elimination of any allowance for depreciation and of certain accounts for maintenance of way not included in respondent's study before the Illinois commission." The report quotes the dollar amounts of depreciation which the interstate commission considers proper direct charges to the service and hence are out-of-pocket costs. It similarly considers certain maintenance of way expenses. The report points out that these depreciation and maintenance of way charges were not included in respondent's showing before the Illinois commission, but were included in its showing before the interstate commission. The report states that respondent's explanation for the prior omission was "its impression that, even without them, it had shown a considerable deficit from this service." The re-

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4 Herein sometimes referred to as the "state commission".

5 49 U. S. C. A., § 13 (4). "Whenever * * * the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes * * * any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination."

port adds: "This explains but does not excuse its incomplete showing before the Illinois commission."

The report finds:

> "Summarizing, the total revenues from the passenger-carrying portion of the suburban service were $1,799,140, the out-of-pocket cost, not including nonpayroll taxes or return, was $2,269,404, and the credit [fol. 709] for nonrevenue passengers $164,226, resulting in a total out-of-pocket deficit of $306,038.
>
> If the fares were increased an average of 20 percent as in *Commutation and Multiple Fares, Illinois and Wisconsin*,[6] *supra*, plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually."

The report also sets forth as follows:

> "Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as, in the words of respondent's traffic witness, there is 'a strong similarity' between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois commission, having formerly been on a parity."

Referring to the net railway operating income of respondent in 1954, the report states that it earned "from its freight operations $37,393,050, and suffered a deficit from

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6 288 I. C. C. 15.

its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, State and interstate."

The report also makes the following findings:

"1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribu-[fol. 710] tion toward its indirect costs nor to a return on investment.

2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 (4) of the Interstate Commerce Act.

3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future."

1. While the interstate commission finds that the intrastate rates which it approves "would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually" and that

those fares "will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment," at no place does the commission make any findings as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income. In fact the interstate commission makes no finding as to what the Milwaukee Road's total income was for the year in question, and likewise no finding as to what would be a fair proportionate share of total income of the road which the intrastate traffic now under consideration should contribute. These data are not found by the interstate commission either as specific findings in dollars or in any other form. Nor does the commission find that the revenue produced by the intrastate rates [fol. 711] proposed by it will constitute not more than a fair proportion of respondent's total income, which finding was held sufficient in *King* v. *United States*, 344 U. S. 254, at 275.

In *North Carolina* v. *United States*, 325 U. S. 507, at 516, the court said:

> "But the question posed by the Commission's conclusion was whether the particular North Carolina railroads were obtaining from North Carolina's intrastate passenger rates their fair part of such funds as were required to enable these particular railroads to render adequate and efficient service. The Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income."

The report which we are considering asserts that intrastate traffic should make a larger contribution, but there is no finding as to what contribution would be a fair proportion of the railroad's total income.

The rule is established that the interstate commission must make basic findings required to support its order. *Florida* v. *United States*, 282 U. S. 194, at 215; *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, at 86.

An order of the interstate commission is void unless supported by findings of the basic or quasi-jurisdictional facts

conditioning its power. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454, at 462; *United States* v. *Chicago, M., St. Paul & P. R. Co.*, 294 U. S. 499, at 504.

In *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U.S. 74, at 86, the court said:

> "The Commission's failure specifically to report the facts and give the reasons on which it concluded that under the circumstances the use of the average or group basis is justified leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order. Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this."

See also 15 C. J. S. 534.

[fol. 712] The report of the interstate commission completely ignores that, in determining intrastate fares, a controlling inquiry is what contribution from the intrastate traffic would constitute a fair proportion of the railroad's income. In the case at bar it is not sufficient that the interstate commission found that the prescribed rates will "make a fair contribution toward respondent's indirect costs and return on investment". A fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment. Paying all of the costs of suburban service and, in addition, making a contribution to the other costs of the railroad, may well be more than contributing a fair proportion of Milwaukee Road's total income. Nor is it sufficient that the interstate commission found that, to the extent that the suburban service "fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs", it discriminates against its freight operations. This finding is no substitute for one as to what it should contribute as a fair proportionate share of the railroad's total income. Without the latter finding the order of the interstate commission cannot stand. This is not inconsistent

with *State of Illinois* v. *United States*, 101 F. Supp. 36, affirmed 342 U. S. 930. There was in that case a specific subsidiary finding [281 I. C. C. 552].

> "The fares approved herein will yield a return after taxes of about 3.2 percent, and an average increase of about 20 percent or $1,300,000 per annum, which *we find to be the approximate measure of the revenue discrimination* against interstate commerce resulting from petitioner's present multiple and commutation fares." (Emphasis added.)

In that case the commission also found "That in connection with its minimum and round-trip suburban fares, petitioner has not shown any person-locality or *revenue discrimination against interstate commerce*." (Finding 2, 281 I. C. C. 552.) (Emphasis added.)

2. Even under the rationale of the interstate commission, it is somewhat difficult to ascertain from its report the precise obligation of the suburban service to which the intrastate fares, as fixed thereby, are to contribute after meeting the out-of-pocket deficit.

The report at one place says that if the fares were in- [fol. 713] creased an average of 20 per cent,[7] plus an additional increase to a minimum of 25 cents per trip, the increased revenue based on the year 1954 would eliminate the out-of-pocket deficit and result in *a contribution to indirect costs and taxes*, of approximately $77,000 annually. Based upon the same year, the report at another place says that to the extent that this service fails to meet the out-of-pocket cost and make *all the contribution that it reasonably can to respondent's indirect costs*, it increases the latter's passenger deficit and results in an undue burden on its freight operations. In finding 4 the report states that the prescribed fares are necessary so that the travel thereunder may make a *fair contribution toward respondent's indirect costs and return on investment*. If a *contribution* is to be made toward the satisfaction of an obligation, it is obvious

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7 Actually they were increased about 21 per cent according to the counsel for the Milwaukee Road, or 28 per cent according to counsel for the protestants.

that the extent of the obligation must be fixed; otherwise no one can know what the size of the contribution should be. We are here speaking of an involuntary contribution. The limitless requirements implicit in the parts just cited from the report are reminiscent of public fund raising campaigns which used as their slogan "Give till it hurts". That was a legitimate device of patriotic appeal. However, we are here confronted with the imposition of an involuntary contribution being exacted by legal means. To be sustained, it must be based upon a finding of the extent of the obligation. It cannot be supported by a vague reference to an unascertained amount of "indirect costs and taxes" or what the suburban service can reasonably contribute to the Milwaukee Road's "indirect costs", or "a fair contribution toward respondent's indirect costs and return on investment".

3. We are confronted with the question of whether the evidence before the interstate commission supports its finding that the intrastate fares which it has prescribed will be just and reasonable for the future. This finding rests on an averment in the report that the comparison with the fares of the Chicago and North Western Railway Company is more persuasive, as, in the words of respondent's traffic witness, "there is a strong similarity between the suburban territory served by the Milwaukee Road and that served by the North Western. * * * ".

The evidence of J. K. Pain, the traffic witness referred to, [fol. 714] does not support this averment. He actually said that he believed there is a *difference* in the operation of the two roads and that he was not prepared on the subject of cost or expense, which was a little bit out of his line. He added that an endeavor was made to figure an increase on an equitable basis "that would recover our losses * * * and would be fair to the suburban passenger". When asked if Milwaukee Road's territory was "pretty similar" to North Western's, Mr. Pain asked, "Do you mean geographically or in operation or what?" When the examiner said that he was talking about the nature of the suburban community, the witness answered "Yes, you could probably say there is a strong similarity." Thereupon the attorney for the Milwaukee Road stated "we do not offer these North

Western fares as a criteria (*sic*) as to what our fares should be".

There was no evidence offered showing similarity of equipment, service or operating conditions. On the other hand, the record shows that the lines are not comparable. The suburban North Western rates are based upon an operation of 72 steam locomotives and only 3 diesel locomotives as against a complete diesel operation on the Milwaukee. A comparison of the cost of the Milwaukee suburban operation under steam and diesel locomotives shows that the diesel operation costs less than steam. That a comparison cannot be properly made between a steam operation and a diesel operation has been recognized by the interstate commission in a case in which North Western Chicago suburban fares were raised to their present level, and the commission stated, in referring to the analysis upon which its order was based, "The above analysis relates to an existing suburban operation for the year 1954 and obviously does not contemplate the cost of some other suburban operation such as might be encountered with diesel engines, gallery-type cars and Budd cars."[8] Moreover, the interstate commission has taken note of the fact that the Milwaukee division of the North Western carries no freight whatsoever and that the entire cost there must be borne by passenger traffic. *Commutation Fares between Chicago and Wisconsin*, 279 I. C. C. 773, 777-778.

The Milwaukee suburban operation is alleged to be much more comparable to the suburban operation of the Burlington and Rock Island than it is to the North Western operation. Those are the other two Chicago railroads using [fol. 715] diesel locomotives in their suburban service. The commission, nevertheless, ignores that comparison, and holds, in effect, that the Illinois commission was wrong in giving weight to it. Instead, the proposed report applies the North Western formula without any evidence in the record of similarity of conditions necessary to make that formula applicable. The use of the North Western formula was not justified. Without sufficient evidence of comparability in operation, there is no ground for fixing the Mil-

8 288 I. C. C. 15, at 23.

waukee Road's fares at the North Western level, or for finding that the resulting fares are just and reasonable.

We hold that the evidence does not support the finding of the interstate commission that the prescribed rates are just and reasonable. Nor can a carrier justify unreasonably high rates on intrastate business on the ground that only in that way is it able to meet losses on its interstate business. *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, at 483; *Smyth* v. *Ames*, 169 U. S. 466 at 541, 42 L. Ed., 819 at 847.

4. In the state commission proceeding, which was initiated by the Milwaukee Road, the latter showed in its exhibits that the depreciation of locomotives and coaches was not included in the out-of-pocket cost. Likewise, in its exhibits in that case it did not include in out-of-pocket expense certain maintenance of way accounts involving maintenance of facilities, such as roadbed, etc. The comments in the interstate commission's report, in regard to these items, show that they were by the Milwaukee Road deliberately removed from the consideration of the state commission. It follows that facts presented by Milwaukee Road to and relied upon by the interstate commission to support its finding as to an out-of-pocket suburban deficit, were not presented to nor relied on by the Milwaukee Road in the state commission proceeding. If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.

In *North Carolina* v. *United States*, 325 U. S. 507, at 511, the court said:

> "Since the enactment of § 13 (4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is [fol. 716] reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate."

Where a railroad seeks the fixing of higher intrastate rates by the interstate commission after failing in such

endeavor before a state commission, § 13(4) does not contemplate that the state commission is to be considered only a way station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us.

Plaintiffs have made various other charges against the order of the interstate commission, which we do not find it necessary to decide, in view of the fact that our views herein expressed sufficiently decide the case now before us.

In this type of case we are not required, under rule 52(a), Federal Rules of Civil Procedure, or otherwise, to make findings of fact. *Despatch Shops* v. *Railroad Retirement Board*, 60 F. Supp. 106, affirmed 154 F. 2d 417; *In Re Chicago, M. St. P. & P. R. Co.; Abrams* v. *Scandrett*, 138 F. 2d 433.

For the reasons hereinbefore set forth, the order of the Interstate Commerce Commission is set aside and the subject matter thereof is remanded to that commission for further proceedings not inconsistent herewith. A permanent injunction will issue forthwith, as prayed.

[fol. 718] In United States District Court, Northern District of Illinois, Eastern Division

No. 56 C 681

State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association, Plaintiffs,

v.

United States of America, Interstate Commerce Commission, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Defendants.

Decree—June 14, 1956

This case has been heard on the complaint; the answers of defendants thereto; the record before the Interstate Commerce Commission in the proceeding known as Docket

No. 31742 of that commission, and the arguments of counsel for plaintiffs and defendants, and the court being fully advised in the premises, ORDERS, ADJUDGES and DECREES:

1. The order of the Interstate Commerce Commission, dated March 2, 1956 (and the prior report and order dated November 21, 1955, upon which the order of March 2, 1956 was based) entered in proceeding Docket No. 31742, are beyond the power, and are an abuse of authority, of the Interstate Commerce Commission.

2. Said report and orders are not supported by the findings of, nor by the evidence before, the Interstate Commerce Commission in the proceeding, commission's Docket No. 31742, in which they were entered.

3. Said report and orders of the Interstate Com- [fol. 719] merce Commission are void, and are set aside and the subject matter is remanded to said Commission for further proceedings not inconsistent with the opinions this day filed herein.

4. The Interstate Commerce Commission is permanently enjoined from enforcing said report and orders, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company (herein called "the Milwaukee Road") is permanently enjoined from continuing to give effect to the fares prescribed therein.

5. The Milwaukee Road shall return forthwith to the persons from whom collected all monies received by it as excess fares under the order of this court dated April 18, 1956.

6. Judgment is entered in favor of Illinois Commerce Commission and Milwaukee Road Commuters' Association, and against the Milwaukee Road for costs.

/s/ Elmer J. Schnackenberg, United States Circuit Judge, /s/ Philip L. Sullivan, United States District Judge, /s/ Walter J. La Buy, United States District Judge.

Dated: June 14, 1956.

[fol. 721] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

NOTICE OF APPEAL OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY TO THE SUPREME COURT OF THE UNITED STATES—filed June 15, 1956

I.

Notice is hereby given that Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation, one of the defendants above named, hereby appeals to the Supreme Court of the United States from the decree entered in this action on June 14, 1956. This appeal is taken pursuant to 28 U.S.C., Section 1253.

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record of the proceedings before the specially constituted three-judge Court, including all of the record [fol. 722] of proceedings before the Interstate Commerce Commission introduced in evidence before the Court.

III.

The following questions are presented by this appeal:

(1) Did the Court err in holding that the order of the Interstate Commerce Commission, dated March 2, 1956, and the prior report and order dated November 21, 1955, entered in proceeding before the Interstate Commerce Commission in Docket No. 31742, are beyond the power, and are an abuse of authority, of the Interstate Commerce Commission?

(2) Did the Court err in holding that said report and orders are not supported by the findings of, nor by the

evidence before the Interstate Commerce Commission in said proceeding?

(3) Did the Court err in holding that said report and orders are void and in setting them aside?

(4) Did the Court err in enjoining the Interstate Commerce Commission from enforcing said report and orders, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company from continuing to give effect to the fares prescribed therein?

(5) Did the Court err in directing Chicago, Milwaukee, St. Paul and Pacific Railroad Company to return to the persons from whom collected all monies received by it as [fol. 723] excess fares under the Court's order dated April 18, 1956?

(6) Did the Court err in holding that the Interstate Commerce Commission's said report and orders, which fixed both interstate and intrastate fares, should be set aside because of the absence of a specific finding of what amount of contribution from the intrastate traffic would constitute a fair proportion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's total income?

(7) Did the Court err in holding that said report and orders should be set aside because of the absence of a finding that the revenue produced by the intrastate rates proposed by the Interstate Commerce Commission will constitute not more than a fair proportion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's total income?

(8) Did the Court err in holding that the Interstate Commerce Commission's specific finding that the prescribed fares "are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service" is not adequate to supply the alleged need for findings of the nature referred to in Paragraphs (6) and (7) supra?

[fol. 724] (9) Did the Court err in holding that the evidence does not support the finding that the prescribed rates are just and reasonable?

(10) Did the Court err in refusing to permit the Interstate Commerce Commission to fix the interstate and intrastate fares of Chicago, Milwaukee, St. Paul and Pacific Railroad Company on the same basis as the fares of Chicago and North Western Railway Company merely because of the absence of evidence of comparability in operation of the two railroads?

(11) Did the Court err in holding that the state commission must be offered a chance to fix fares on the same evidence and on the same basis as sought from the Interstate Commerce Commission?

/s/ W. J. Quinn, /s/ T. H. Maguire, /s/ Edwin R. Eckersall, /s/ R. K. Merrill, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Defendant, Address: 888 Union Station, Chicago 6, Illinois.

[fol. 725] Proof of Service (omitted in printing)

[fol. 728] In the United States District Court for the Northern District of Illinois, Eastern Division

[Title omitted]

Order Staying Injunction, etc.—June 18, 1956

This cause coming on to be heard on motion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (herein referred to as "the Milwaukee Road") one of the defendants herein, for the entry of an order staying the injunction prescribed by decree of this court entered June 14, 1956, pending the hearing of said cause on appeal before the Supreme Court of the United States, it appearing to the court that due and proper notice of the time and place for presentation of said motion has been served on all of the attorneys

of record and it further appearing to the Court that Notice of Appeal from the decree entered by this Court on June [fol. 729] 14, 1956, has been duly served and filed and the Court being fully advised in the premises,

IT IS ORDERED:

1. The injunction prescribed by decree of this Court entered June 14, 1956, is stayed pending disposition of the appeal from that decree, heretofore taken to the Supreme Court of United States, and subject to the conditions below set forth.

2. The excess fares collected by the Milwaukee Road after April 20, 1956, pursuant to order of the Interstate Commerce Commission set aside by the decree, shall be impounded and held by the Milwaukee Road in a separate fund so that in the event the decree is affirmed, or the appeal therefrom is dismissed or discontinued, the excess fares may be refunded to the persons who paid them. The Milwaukee Road shall issue suitable coupons or other evidence to such persons showing their payment of the excess fares.

3. If the decree is reversed and injunction dissolved, the Milwaukee Road shall retain the impounded excess fares and may transfer them to its general funds.

[fol. 730] 4. If the decree is affirmed or the appeal is dismissed or discontinued, the Milwaukee Road shall post immediately in its suburban stations, notice that refund will be made of the excess fares to the persons who have paid them.

5. Six months after the posting of such notice, the Milwaukee Road shall file a report in this court setting forth the total amount of the excess fares impounded, the total amount of refunds made therefrom, and the balance of the impounded excess fares then unclaimed. At the same time, the Milwaukee Road shall deposit with the Clerk of this Court the amount of such unclaimed balance.

6. Thereupon, upon petition of plaintiffs, and evidence showing reasonable expenses (including reasonable attorneys' fees) incurred by each of the plaintiffs in the proceed-

ing before the Interstate Commerce Commission, reviewed in this case, in prosecuting this case in this Court, and in connection with the appeal from the decree herein, the Court shall order that the amount of said reasonable expenses shall be paid to plaintiffs from the unclaimed balance of the impounded excess fares. Any remaining balance shall be retained by the Clerk subject to such disposition as this [fol. 731] Court may direct.

7. The Court retains jurisdiction of this case to enter such further orders as may be required to carry this order into effect.

ENTER:

Elmer J. Schnackenberg, Circuit Judge, Philip L. Sullivan, Judge, Walter J. La Buy, Judge.

Dated: June 18, 1956

[fol. 733] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 56-C-681

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, Defendants.

NOTICE RE USE OF TRANSCRIPT AND EXHIBITS—
Filed July 20, 1956

To—

Robert Tieken, United States Attorney, Suite 450 Old Post Office Building, Chicago, Illinois:

Stanley N. Barnes, Esq., Assistant Attorney General, Maurice A. Fitzgerald and James E. Kilday, Attorneys, Department of Justice, Washington 25, D. C.;

Robert W. Ginnane, Chief Counsel, Leo H. Pow, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C.;

Latham Castle, Attorney General, State of Illinois, Harry R. Begley, Special Assistant Attorney General, State of Illinois, 160 North LaSalle Street, Chicago, Illinois;

Tenney, Sherman, Bentley and Guthrie, 120 South LaSalle Street, Chicago, Illinois.

Please take notice that on Friday, July 20, 1956, at the opening of Court in the forenoon, or as soon thereafter as counsel may be heard, we shall appear before The Honorable Win G. Knoch, in the room usually occupied by him [fol. 734] as a court room, in the United States Court House, Chicago, Illinois, or, in his absence, before such other Judge as may then and there be sitting in his place and stead, and shall move the Court for the entry of an order granting leave to include in the transcript of record for transmittal to the United States Supreme Court, the original certified transcript of evidence and all exhibits in the proceeding before the Interstate Commerce Commission, I. C. C. Docket No. 31742, entitled, "Chicago Intrastate Suburban Fares of Milwaukee Railroad", and related cases; all of which constituted a part of the record in the above entitled cause, in lieu of a copy thereof, at which time and place you may appear, if you so see fit.

W. J. Quinn, T. H. Maguire, Edwin R. Eckersall, R. K. Merrill, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Defendant, Address: 888 Union Station, Chicago 6, Illinois.

[fol. 735] AFFIDAVIT OF SERVICE (omitted in printing)

[fol. 737] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

ORDER AUTHORIZING THE TRANSMITTAL OF THE ORIGINAL TRANSCRIPT AND EXHIBITS, ETC.—July 20, 1956

This cause coming on to be heard this day upon the motion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Defendant, for an order permitting the Clerk of this Court to include in the transcript of record for transmittal to the United States Supreme Court, the original certified transcript of evidence and all exhibits in the proceeding before the Interstate Commerce Commission, I. C. C. Docket No. 31742, entitled, "Chicago Intrastate Suburban Fares of Milwaukee Railroad", and related cases, all of which constituted a part of the record in the above entitled cause, in lieu of a copy thereof, and the Court having examined the files and heard the statements of Counsel,

IT IS ORDERED, That the Clerk of this Court include in the transcript of record for transmittal to the United States [fol. 738] Supreme Court, the original certified transcript of evidence and all exhibits in the proceeding before the Interstate Commerce Commission, I. C. C. Docket No. 31742, entitled, "Chicago Intrastate Suburban Fares of Milwaukee Railroad", and related cases, all of which constituted a part of the record in the above entitled cause, in lieu of a copy thereof, all to be returned when such transcript of evidence and exhibits have served their purpose in the United States Supreme Court.

ENTER, this 20th day of July, A. D., 1956.

John P. Barnes, United States District Judge.

[fol. 739] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

NOTICE OF MOTION TO AMEND OR CORRECT JUDGMENT AND OPINION—Filed July 20, 1956

To:

Honorable Latham Castle, Attorney General of Illinois (Attn.: Harry R. Begley, Esq.), 160 North La Salle Street, Chicago, Illinois.

Tenney, Sherman, Bentley and Guthrie, 120 South La Salle Street, Chicago, Illinois.

W. J. Quinn, Esquire, 888 Union Station, Chicago 6, Illinois.

PLEASE TAKE NOTICE that I have this day, July 20th, 1956, filed the government's motion to amend with the Honorable Elmer J. Schnackenberg, United States Circuit Judge, by leaving copies thereof with the Honorable Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, a copy of which is herewith served upon you.

R. Tieken, United States Attorney.

[fol. 740] PROOF OF SERVICE (omitted in printing)

[fol. 741] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

MOTION TO AMEND OR CORRECT JUDGMENT AND OPINION—Filed July 20, 1956

Now come the defendants, United States of America and the Interstate Commerce Commission, and move the Court, pursuant to rule 60(a) of the Federal Rules of Civil Procedure, to amend or correct the final judgment or decree

herein entered on June 14, 1956, and the opinion herein filed on the same date, in the following particulars and for the reasons stated, viz.:

1.

We move the Court to amend the said judgment or decree, and particularly paragraph number 1 thereof, by striking therefrom the reference to the order of the Interstate Commerce Commission dated November 21, 1955, or, in the [fol. 742] alternative, by expressly excluding from the operation of said judgment or decree so much of the said Commission's order as authorized an increase in *interstate* fares. The interstate fare increases authorized by the Commission were not attacked by the plaintiffs in this action, were not discussed or passed upon by the Court in its opinion, and there was no factual or legal basis for the Court to set aside and annul the said interstate fare increases. We suggest that the Court did not intend to enjoin the Commission's order insofar as it authorized increases in interstate fares, and that the inclusion of such increases in the judgment or decree was an inadvertent or clerical error which, under rule 60(a), *supra*, may be corrected by the Court at any time on its own initiative or on motion of any party.

2.

We move the Court also to delete from its opinion in this case paragraph number 4 (on page 9) and any other statement which would make it a condition precedent to action by the Interstate Commerce Commission under 49 U.S.C. 13(4) for the Milwaukee Railroad first to present to the Illinois Commerce Commission for its consideration the same evidence presented to the Interstate Commerce Commission. We doubt if the Court realized, when it filed its opinion, that the language in paragraph 4 would render meaningless and futile the direction in the last paragraph of the opinion, and in paragraph 3 of the judgment or decree, [fol. 743] for remand of this case to the Interstate Commerce Commission "for further proceedings not inconsistent with the opinion". For to remand the case to the Inter-

state Commerce Commission and a. the same time require that the evidence presented to and considered by it be first presented to and considered by the Illinois Commission, would effectively tie the hands of the interstate body and make it impossible for it to proceed in accordance with the Court's opinion or otherwise. We suggest, therefore, that the remand direction must have been an inadvertent error which the Court will desire to correct.

Further in support of this part of our motion, we urge the Court to reconsider the statements in paragraph 4 of its opinion, in the light of the following authorities: *Florida* v. *United States*, 282 U.S. 194, 210; *Illinois* v. *United States*, 101 F. Supp. 36, 40, 47, aff'd 342 U.S. 930, reh. denied 343 U.S. 911; *North Carolina* v. *United States*, 128 F. Supp. 718, aff'd 350 U.S. 805. As we understand these decisions, they stand for the proposition that the jurisdiction and authority of the Interstate Commerce Commission to increase intrastate rates or fares to remove unlawful discrimination against interstate commerce is not affected by the pendency of state commission proceedings or anything that may be done or not done in such proceedings. These authorities also hold that the Interstate Commerce Commission has the power under 49 U.S.C. 13(4) to order an increase in intrastate rates or fares to remove such discrimination even if the affected carrier has not first re- [fol. 744] quested the state commission to allow such increases. It follows that the Court was in error in its holding (par. 4 of opinion) that "the state commission should have been given a chance to fix fares on the same evidence and the same basis" as those on which the Interstate Commerce Commission acted. We strongly urge the Court to correct this obvious error by deleting paragraph 4 from its opinion.

Respectfully submitted,

Victor R. Hansen, Assistant Attorney General.
/s/ R. Tieken, United States Attorney.
/s/ James E. Kilday, /s/ Maurice A. Fitzgerald,
Attorneys, Department of Justice, Washington 25, D. C.
Attorneys for United States of America, Defendant.

Robert W. Ginnane, General Counsel, /s/ Leo H. Pou, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C.
Attorneys for Interstate Commerce Commission, Defendant.

[fol. 745] In the United States District Court for the Northern District of Illinois, Eastern Division

[Title omitted]

Order Denying Motion to Amend or Correct

Now come the defendants, United States of America and the Interstate Commerce Commission, and move the court to amend or correct the final judgment or decree herein entered on June 14, 1956, and the opinion herein filed on the same date, which motion was presented to this court on July 20, 1956, and the court having considered the said motion and the arguments of counsel in support thereof, as well as the objections thereto presented by plaintiffs, and the arguments in support thereof, and being fully advised in the premises, It is ordered that the said motion be and the same is hereby denied.

Elmer J. Schnackenberg, Judge of the United States Court of Appeals for the Seventh Circuit.

Philip L. Sullivan, Judge of the United States District Court for the Northern District of Illinois, Eastern Division.

Walter J. La Buy, Judge of the United States District Court for the Northern District of Illinois, Eastern Division.

[fol. 746] Clerk's Certificate to Foregoing Transcript (omitted in printing)

[fol. 747] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

NOTICE OF APPEAL OF UNITED STATES TO THE SUPREME COURT OF THE UNITED STATES.—Filed August 13, 1956

I

Notice is hereby given that the United States of America, a defendant in the above-entitled action, hereby appeals to the Supreme Court of the United States from the final judgment setting aside the order of the Interstate Commerce Commission, entered in this action on June 14, 1956.

This appeal is taken pursuant to 28 U.S.C. 1253 and 2101(b).

II

Intervenor Chicago, Milwaukee, St. Paul and Pacific Railroad Company having previously filed a notice of appeal in which it requested the clerk of this Court to prepare for transmission to the Clerk of the Supreme Court of the United States a transcript of the entire record in this case, the clerk is requested to transmit additionally to the Clerk of the Supreme Court this notice of appeal.

[fol. 748] III

The following questions are presented by this appeal:

1. Whether the Interstate Commerce Commission, in directing increases in intrastate passenger fares, pursuant to Section 13(4) of the Interstate Commerce Act, is precluded from relying upon evidence which had not been introduced at a prior proceeding before the state regulatory commission in which the latter had refused to increase the intrastate fares.

2. Whether the district court, in setting aside the Commission's order directing increases in intrastate fares, fur-

ther erred in also setting aside that part of the order which authorized increases in interstate fares.

/s/ Daniel M. Friedman, Attorney, Department of Justice, Attorney for the United States, Address: Department of Justice, Washington 25, D. C.

[fol. 749] Proof of Service (omitted in printing)

[fol. 750] [File endorsement omitted]

In the United States District Court for the Northern District of Illinois, Eastern Division

[Title omitted]

Notice of Appeal of the Interstate Commerce Commission to the Supreme Court of the United States—Filed August 13, 1956

I.

Notice is hereby given that the Interstate Commerce Commission, a defendant in the above-styled civil action, hereby appeals to the Supreme Court of the United States from the final judgment or decree herein entered on June 14, 1956, whereby the orders of the Interstate Commerce Commission dated November 21, 1955, and March 2, 1956, in a proceeding entitled *Chicago Intrastate Suburban Fares of Milwaukee Railroad*, Docket No. 31742, were annulled and set aside and their enforcement was enjoined.

[fol. 751] This appeal is taken pursuant to 28 U.S.C. 1253 and 2101(b).

II.

The appellant, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, in its notice of appeal, having requested the clerk of this Court to prepare a transcript of the entire record in this case for transmission to the Supreme Court of the United States, the only additional paper or docu-

ment the clerk is now requested to transcribe and forward to the Supreme Court is this notice of appeal.

III.

The following questions are presented by this appeal:

(1) Whether the Interstate Commerce Commission in directing increases in intrastate passenger fares pursuant to section 13(4) of the Interstate Commerce Act, in order to eliminate discrimination against interstate commerce, is precluded from relying upon evidence which had not been introduced at a prior proceeding before the state regulatory commission in which the latter had refused to increase the intrastate fares.

(2) Whether the district court, in setting aside the Commission's order directing increases in intrastate fares, further erred in also setting aside that part of the order which authorized increases in interstate fares.

(3) Whether the district court erred in setting aside the [fol. 752] Commission's orders increasing both the interstate and intrastate suburban fares because of the absence of a finding as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income, the Commission having found that the increased fares "are necessary so that travel thereunder may make a fair contribution toward [the railroad's] indirect costs and return on investment."

(4) Whether the district court erred in holding that the Commission in fixing the fares here involved, made an improper use of fares previously established for the Chicago and North Western Railway Company.

/s/ Robert W. Ginnane, General Counsel, /s/ Leo H. Pou, Associate General Counsel, Attorneys for the Interstate Commerce Commission, Washington 25, D. C.

[fol. 753] CERTIFICATE OF SERVICE (omitted in printing)

[fol. 755] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT
(omitted in printing)

[fol. 756] SUPREME COURT OF THE UNITED STATES

No. 307, 502 and 503, October Term, 1956

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Appellant,

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, et al.;
UNITED STATES OF AMERICA, Appellant,

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION; and INTERSTATE COMMERCE COMMISSION, Appellant,

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION.

APPEALS from the United States District Court for the Northern District of Illinois.

ORDER NOTING PROBABLE JURISDICTION—December 10, 1956

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours allowed for oral argument.

LIBRARY
SUPREME COURT, U.S.

JOHN T. FEY, Clerk

No. ~~356~~ 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT

W. J. QUINN,
EDWIN R. ECKERSALL,
888 Union Station,
Chicago 6, Illinois,
Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellant.

T. H. MAGUIRE,
R. K. MERRILL,
Of Counsel.

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STATUTES CITED.

Interstate Commerce Act, as amended, 49 U. S. C. 1, et seq.:

National Transportation Policy 2

Section 13(3) 2; 3, 5, 8

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company submits herewith jurisdictional statement showing that this Court has jurisdiction on appeal from the decree entered by the District Court for the Northern District of Illinois, Eastern Division, on June 14, 1956, and that substantial questions are presented by the appeal.

OPINION BELOW.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is not yet

reported. It is set forth in Appendix A, *infra*, pp. 14-24. The report of the Interstate Commerce Commission is reported at 297 I.C.C. 353. It is set forth in Appendix C, *infra*, pp. 27-40.

JURISDICTION.

This action was brought under 28 U. S. C., Section 1336 by the State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association to set aside two orders of the Interstate Commerce Commission (Appendices D and E, *infra*, pp. 41-42). The decree sought to be reviewed (Appendix B, *infra*; pp. 25-26) is dated and was entered June 14, 1956. Notice of appeal was filed June 15, 1956, in the District Court of the United States for the Northern District of Illinois, Eastern Division. Jurisdiction of this Court is conferred by 28 U. S. C., Sections 1253 and 2101(b). The following cases sustain the jurisdiction of this Court to review the decree on direct appeal: *United States* v. *Pennsylvania Railroad Company*, 323 U. S. 612; *Radio Corporation of America* v. *United States*, 341 U. S. 412; *Thompson* v. *United States*, 343 U. S. 549; *United States* v. *Great Northern R. Co.*, 343 U. S. 562.

STATUTES INVOLVED.

This appeal involves the following provisions of the Interstate Commerce Act, as amended, set forth in Appendix F, *infra*, pp. 45-47: National Transportation Policy (preceding Section 1) and Sections 13(3), 13(4) and 15a(2), 41 Stat. 484, 48 Stat. 220, and 54 Stat. 899 and 912, 49 U. S. C. Sections 13(3), 13(4), and 15a(2).

QUESTIONS PRESENTED.

1. The question of most serious public concern presented by this appeal is whether a state commission must first sit in judgment on the lawfulness of intrastate rates or fares before the Interstate Commerce Commission can exercise

its powers under Section 13(3) and (4) of the Interstate Commerce Act. This Court has clearly held that prior state action is not required.

The lower court held to the contrary.

Also presented by this appeal are the following questions:

2. Whether the court below erred in holding that the Interstate Commerce Commission cannot fix the interstate and intrastate suburban fares of Chicago, Milwaukee, St. Paul and Pacific Railroad Company on the same basis as the suburban fares of the Chicago and North Western Railway Company in the absence of evidence of comparability in operation of the two railroads.

3. Whether the court erred in holding that the Interstate Commerce Commission's said report and orders, which fixed both interstate and intrastate fares, should be set aside because of the absence of a specific finding of what contribution from the intrastate traffic would constitute a fair proportion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's total income, or, in the alternative, a finding that the revenue produced by the intrastate fares proposed by the Interstate Commerce Commission will constitute not more than a fair proportion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's total income.

4. Whether the court erred in holding that the Interstate Commerce Commission's finding that the prescribed fares

> * * * are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service"

does not supply any need for findings of the nature referred to in paragraph 3, *supra*.

5. Whether the court erred in holding that the evidence does not support the Interstate Commerce Commission's finding that the prescribed fares are just and reasonable.

6. Whether the court erred in holding that the order of the Interstate Commerce Commission, dated March 2, 1956, prescribing intrastate fares, and the prior report and order dated November 21, 1955, prescribing interstate fares, are beyond the power, and are an abuse of authority, of the Interstate Commerce Commission.

7. Whether the court erred in holding that said report and orders are not supported by the findings of, nor by, the evidence before the Interstate Commerce Commission in said proceeding.

STATEMENT OF THE CASE.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called "the Milwaukee") operates a railroad in and through thirteen states of the Middlewest and the Pacific Northwest, having eastern termini at Chicago, Illinois, and Westport, Indiana, and western termini at Seattle and Tacoma, Washington. Among its services is the transportation of passengers in the Chicago suburban area between Chicago, on the one hand, and Walworth, Wisconsin, to the north and Elgin, Illinois, to the west, including numerous intermediate points within the State of Illinois.

Faced with annual out-of-pocket losses[1] from its suburban operations of over $1,000,000, the Milwaukee in July,

[1] "Out-of-pocket loss" refers to the deficit remaining after deducting suburban passenger revenues from out-of-pocket expenses incurred in performing the suburban service. "Out of-pocket expenses" of suburban service are those expenses which, over a period of time, would be avoided if the suburban service were not performed.

1952, filed a petition with the Illinois Commerce Commission requesting permission to discontinue its lightly patronized non-rush hour trains. It also requested permission to increase its Illinois intrastate suburban fares to a level that, together with the savings from such discontinuances as the Illinois Commerce Commission might authorize, would eliminate the out-of-pocket loss. After prolonged hearings, and a delayed decision, the Illinois Commerce Commission in November, 1954, denied permission to the Milwaukee to discontinue any trains or to increase its fares.

The Milwaukee then turned to its remedy under federal law by petitioning the Interstate Commerce Commission to investigate under Section 13(3),(4) of the Interstate Commerce Act, Title 49 U. S. C., Sec. 13(3),(4), whether the suburban fares unjustly discriminated against interstate commerce, and to adjust the fares to remove such discrimination.

In hearings before the Interstate Commerce Commission (hereinafter called "the Commission") the Milwaukee offered detailed evidence of an annual out-of-pocket loss from its suburban passenger operations of slightly over $700,000, which reflected savings from dieselization of its motive power during 1954. The Commission, over objection that it had excluded certain substantial out-of-pocket expenses, found the annual out-of-pocket loss to be $306,038. Including fully distributed expenses,[2] the Milwaukee showed an additional annual suburban passenger loss, unquestioned by the Commission and uncontested by plaintiffs, of approximately $1,100,000.

---

[2] "Fully distributed expenses" include the out-of-pocket expenses (see note [1]), plus a fair allocation of expenses incurred jointly by the suburban passenger service and other services.

In addition, detailed evidence was offered of the extensive facilities, equipment and personnel required for the suburban passenger service, the unfavorable transportation characteristics of the traffic involved,[3] and the suburban fares of other railroads and bus companies in the Chicago area.

The Commission, by order dated November 21, 1955, with respect to interstate fares, and by order dated March 2, 1956, with respect to intrastate Illinois fares, prescribed increases averaging approximately 21%. The increased interstate fares became effective January 29, 1956, and the intrastate Illinois fares on April 20, 1956. The same fare level had already been in effect since 1953 on the Chicago and North Western Railway, which, like the Milwaukee, serves the suburban area north and west of Chicago in Illinois and Wisconsin.

The Commission found that the increased fares would produce additional annual revenue of approximately $383,000, which would eliminate the $306,038 out-of-pocket deficit as found by the Commission and contribute approximately $77,000 to indirect costs and taxes. Stated differently, the $77,000 would defray 7% of the additional $1,100,000 of fully distributed expenses attributable to suburban service.

In support of its orders prescribing the increased fares, the Commission in its report of November 21, 1955, made the following ultimate findings:

"We find:

1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-

[3] The traffic consists principally of a mass movement of thousands of passengers to Chicago during the morning rush hours and their return during the evening rush hours, with a resulting high incidence of idle equipment and personnel.

pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.

2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13(4) of the Interstate Commerce Act.

3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future."

Suit was brought in the District Court of the United States for the Northern District of Illinois, Eastern Division, by the State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association to set aside the Commission's order. Motion by plaintiffs for a temporary restraining order was denied by the lower court on April 18, 1956, upon condition that the Milwaukee refund the excess fares collected on and after April 20, 1956, if the Commission's order should not be sustained.

By decree dated June 14, 1956, the District Court adjudged that:

(1) The Commission's order of November 21, 1955, prescribing interstate suburban fares, its report of November 21, 1955, and its order of March 2, 1956, prescribing intrastate Illinois suburban fares, are beyond the Commission's power and an abuse of its authority;

(2) Said report and order are not supported by the findings of, nor the evidence before, the Commission;

(3) Said report and orders of the Commission are void and are set aside, and the subject matter remanded to the Commission for further proceedings not inconsistent with the court's opinion;

(4) The Commission is permanently enjoined from enforcing its report and orders, and the Milwaukee from complying therewith; and

(5) The Milwaukee shall return all monies received by it as excess fares under the court's order of April 18, 1956, aforesaid.

The court's opinion found the Commission's orders unlawful because:

(1) The Commission made no finding as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the Milwaukee's total income or, in the alternative, a finding that the revenue produced by the intrastate suburban fares proposed by it will constitute not more than a fair proportion of the Milwaukee's total income;

(2) The evidence before the Commission did not support the finding that the prescribed fares are just and reasonable; and

(3) The state commission must, before the Interstate Commerce Commission can exercise the authority conferred upon it by Section 13(3),(4) of the Interstate Commerce Act, first be given an opportunity to fix fares on the same evidence and on the same basis.

The Milwaukee on June 15, 1956, filed its Notice of Appeal with the lower court.

On June 18, 1956, the court by order stayed the injunction prescribed by its decree of June 14, 1956, upon like conditions for impounding and refunding of excess fares as prescribed in the court's order of April 18, 1956.

THE QUESTIONS ARE SUBSTANTIAL.

The questions herein presented are of far-reaching consequence, both to the orderly regulation of interstate commerce by the Interstate Commerce Commission and to the regulated carriers.

1. Of foremost concern is the invalidation of a Commission order because of alleged failure of the carrier first to seek relief from the state commission. This action by the lower court is contrary to the holding in *State of Florida* v. *United States*, 282 U. S. 194, 210:

> "To hold, as some of the appellants urge, that there can be no adjustment of intrastate rates by the Interstate Commerce Commission so far as may be needed to protect interstate commerce until the state itself has first 'sat in judgment on the issue of the lawfulness of those intrastate rates' would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority."

It is absolutely vital that the Interstate Commerce Commission in discharging the duties imposed upon it by Congress be not delayed by proceedings before state bodies whose jurisdiction is limited to interpreting and applying state statutes. *State of North Carolina* v. *United States*, 128 F. Supp. 718, 724, aff'd. 350 U. S. 805; *State of Illinois* v. *United States*, 101 F. Supp. 36, 47, aff'd. 342 U. S. 930.

The court further disregards the undisputed evidence before the Interstate Commerce Commission that the Milwaukee did, in fact, seek relief from the Illinois Commerce Commission, and notwithstanding its showing of an annual out-of-pocket loss at the time of the hearings of over $1,000,000, the state commission, more than two years and three months after the Milwaukee appealed to it for relief, refused any increase in fares. After such treatment from the state commission, the district court's ruling that the Milwaukee must first seek relief from its presently claimed out-of-pocket deficit of slightly over $700,000 from the same state commission that had just previously withheld relief from an annual out-of-pocket loss of over $1,000,000, is arbitrary in the extreme.

2. Also of great concern to all carriers, as well as to the Commission, is whether the Commission can prescribe the same fares for one railroad as in effect on another, without evidence of comparable operating conditions on each. A standard commonly used in determining maximum reasonable rates and fares is their comparison with rates and fares on like traffic in the same or similar territory. Here, the Commission used as a guide the suburban fares in effect since 1953 on the Chicago and North Western Railway, which, like the Milwaukee, serves the suburban territory north and west of Chicago. The actual effect of the comparison was not to show a need for increased fares to remove discrimination against interstate commerce, which had already been clearly established by the Milwaukee's own cost figures, but to hold down the Milwaukee's fares to a level which does not meet the full cost of the suburban service, nor make any return on investment.

The lower court's decision would make virtually impossible the prescription by the Commission or establishment

by the carriers of uniform fares or rates on like traffic between the same points or in similar territory, because of the impossibility of showing the same operating conditions for any two carriers, and could seriously disrupt the passenger and freight rate structures of the entire country.

3. Another question of substance is the lower court's insistence on a finding by the Commission of what contribution from intrastate traffic would constitute a fair proportion of the Milwaukee's total income. The Interstate Commerce Act requires no such finding, and this Court has specifically declared one unnecessary in *King* v. *United States*, 344 U.S. 254, 274, 275.

The district court attempts to differentiate the *King* case by the finding therein that the revenue from the proposed rates would constitute not more than a fair proportion of the railroad's total income. In the present case the Commission found:

> "That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service."

As stated in *State of New York* v. *United States*, 98 F. Supp. 855, 859, aff'd. 342 U.S. 882, regarding a contention of inadequacy of like findings supporting a Commission order increasing intrastate suburban fares:

> "Experience indicates that to exert pressure for such strivings toward perfection usually results in a piling on of more words without essential change in

substance. The criticism loses its force when the report is read as a whole. It shows without doubt what the Commission thought and did, and thereby the real function of findings is served."

4. The lower court's conclusion that the evidence fails to support the Commission's finding that the prescribed fares are just and reasonable is based on the mistaken premise that the only supporting evidence was of like suburban fares on the Chicago and North Western Railway.

Reference has previously been made to the detailed evidence presented by the Milwaukee of the high cost of the suburban operation, the unfavorable transportation characteristics of the traffic, and fares of other railroads and bus companies in the Chicago area. For the lower court to ignore such substantial evidence directly bearing on a reasonable fare level, and then declare the evidence insufficient to support a finding of reasonableness, is to substitute its uninformed judgment for that of an expert body, the Interstate Commerce Commission.

5. Another substantial question presented is whether a court can strike down an order of the Commission fixing interstate suburban fares, over which it has plenary jurisdiction, together with an order fixing intrastate suburban fares, on any of the grounds above discussed. On the premise that such action was unintentional, the United States of America and the Interstate Commerce Commission attempted by motion to have the lower court correct its order to eliminate from its scope the interstate fares. The lower court, however, denied said motion, and its decree remains an improper interference with the Commission's regulation of interstate commerce.

CONCLUSION.

The questions presented by this appeal are so substantial and of such serious import to the Interstate Commerce Commission and all the carriers subject to its jurisdiction, as to require plenary consideration, with briefs on the merits and oral argument for their resolution, and probable jurisdiction should be noted.

Respectfully submitted,

W. J. Quinn,
Edwin R. Eckersall,
Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

T. H. Maguire,
R. K. Merrill,
Of Counsel.

888 Union Station
Chicago 6, Illinois

August 10, 1956

APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

STATE OF ILLINOIS; ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Plaintiffs,* v. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, *Defendants.*	No. 56 C 681.

June 14, 1956.

Before ELMER J. SCHNACKENBERG, Judge of the United States Court of Appeals for the Seventh Circuit, and PHILIP L. SULLIVAN and WALTER J. LABUY, District Judges.

SCHNACKENBERG, *Circuit Judge.* This is an action to set aside and enjoin the enforcement of an order[1] of the Interstate Commerce Commission[2] authorizing the Chicago, Milwaukee, St. Paul and Pacific Railroad Company[3] to put into effect intrastate rates or fares for Chicago area suburban service higher than those authorized by the Illinois Commerce Commission.[4]

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[1] Entered March 2, 1956, based on report dated November 21, 1955, (297 I. C. C. 353).

[2] Herein sometimes referred to as the "interstate commission".

[3] Herein sometimes refered to as the "Milwaukee Road".

[4] Herein sometimes referred to as the "state commission."

The Milwaukee Road by petition to the interstate commission requested an investigation under § 13 (4) of the Interstate Commerce act[5] to determine whether intrastate suburban passenger rates approved by the state commission unjustly discriminated against interstate commerce. It asked that, if found so to discriminate, the rates be adjusted so as to remove the discrimination. The order of the interstate commission which we now consider is based upon its report of November 21, 1955, in which it refers to the Milwaukee Road as "respondent" and Milwaukee Road Commuters Association as "protestant".

This report states that "on an out-of-pocket basis respondent shows a deficit of $724,511, while protestant shows an income of $9,701. For expenses other than the Union Station, protestant's lower figures are accounted for by the elimination of any allowance for depreciation and of certain accounts for maintenance of way not included in respondent's study before the Illinois commission." The report quotes the dollar amounts of depreciation which the interstate commission considers proper direct charges to the service and hence are out-of-pocket costs. It similarly considers certain maintenance of way expenses. The report points out that these depreciation and maintenance of way charges were not included in respondent's showing before the Illinois commission, but were included in its showing before the interstate commission. The report states that respondent's explanation for the prior omission was "its impression that, even without them, it had shown a considerable deficit from this

[5] 49 U.S.C.A., § 13 (4). "Whenever * * * the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes * * * any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination."

service." The report adds: "This explains but does not excuse its incomplete showing before the Illinois commission."

The report finds:

> "Summarizing, the total revenues from the passenger-carrying portion of the suburban service were $1,799,140, the out-of-pocket cost, not including nonpayroll taxes or return, was $2,269,404, and the credit for nonrevenue passengers $164,226, resulting in a total out-of-pocket deficit of $306,038.
>
> If the fares were increased an average of 20 percent as in *Commutation and Multiple Fares, Illinois and Wisconsin,*[6] *"supra,* plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually."

The report also sets forth as follows:

> "Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as, in the words of respondent's traffic witness, there is 'a strong similarity' between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois commission, having formerly been on a parity."

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[6] 288 I. C. C. 15.

Referring to the net railway operating income of respondent in 1954, the report states that it earned "from its freight operations $37,393,050, and suffered a deficit from its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket cost and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, State and interstate."

The report also makes the following findings:

"1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.

2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 (4) of the Interstate Commerce Act.

3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future."

1. While the interstate commission finds that the intrastate rates which it approves "would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually" and that those fares "will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment," at no place does the commission make any findings as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income. In fact the interstate commission makes no finding as to what the Milwaukee Road's total income was for the year in question, and likewise no finding as to what would be a fair proportionate share of total income of the road which the intrastate traffic now under consideration should contribute. These data are not found by the interstate commission either as specific findings in dollars or in any other form. Nor does the commission find that the revenue produced by the intrastate rates proposed by it will constitute not more than a fair proportion of respondent's total income, which finding was held sufficient in *King* v. *United States*, 344 U.S. 254, at 275.

In *North Carolina* v. *United States*, 325 U.S. 507, at 516, the court said:

> "But the question posed by the Commission's conclusion was whether the particular North Carolina railroads were obtaining from North Carolina's intrastate passenger rates their fair part of such funds as were required to enable these particular railroads to render adequate and efficient service. The Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income."

The report which we are considering asserts that intrastate traffic should make a larger contribution, but there is

no finding as to what contribution would be a fair proportion of the railroad's total income.

The rule is established that the interstate commission must make basic findings required to support its order. *Florida* v. *United States*, 282 U.S. 194, at 215; *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U.S. 74, at 86.

An order of the interstate commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. *Florida* v. *United States*, 282 U.S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U.S. 454, at 462; *United States* v. *Chicago, M., St. Paul & P. R. Co.*, 294 U.S. 499, at 504.

In *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U.S. 74, at 86, the court said:

> "The Commission's failure specifically to report the facts and give the reasons on which it concluded that under the circumstances the use of the average or group basis is justified leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order. Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this."

See also 15 C. J. S. 534.

The report of the interstate commission completely ignores that, in determining intrastate fares, a controlling inquiry is what contribution from the intrastate traffic would constitute a fair proportion of the railroad's income. In the case at bar it is not sufficient that the interstate commission found that the prescribed rates will "make a fair contribution toward respondent's indirect costs and return on investment". A fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment. Paying all of the costs of suburban service and, in addition, making a contribution

to the other costs of the railroad, may well be more than contributing a fair proportion of Milwaukee Road's total income. Nor is it sufficient that the interstate commission found that, to the extent that the suburban service "fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs", it discriminates against its freight operations. This finding is no substitute for one as to what it should contribute as a fair proportionate share of the railroad's total income. Without the latter finding the order of the interstate commission cannot stand. This is not inconsistent with *State of Illinois* v. *United States*, 101 F. Supp. 36, affirmed 342 U.S. 930. There was in that case a specific subsidiary finding [281 I. C. C. 552].

> "The fares approved herein will yield a return after taxes of about 3.2 percent, and an average increase of about 20 percent or $1,300,000 per annum, which *we find to be the approximate measure of the revenue discrimination* against interstate commerce resulting from petitioner's present multiple and commutation fares." (Emphasis added.)

In that case the commission also found "That in connection with its minimum and round-trip suburban fares, petitioner has not shown any person-locality or *revenue discrimination against interstate commerce*." (Finding 2, 281 I. C. C. 552.) (Emphasis added.)

2. Even under the rationale of the interstate commission, it is somewhat difficult to ascertain from its report the precise obligation of the suburban service to which the intrastate fares, as fixed thereby, are to contribute after meeting the out-of-pocket deficit.

The report at one place says that if the fares were increased an average of 20 per cent,* plus an additional increase to a minimum of 25 cents per trip, the increased revenue based on the year 1954 would eliminate the out-of-

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* Actually they were increased about 21 per cent according to the counsel for the Milwaukee Road, or 28 per cent according to counsel for the protestants.

pocket deficit and result in *a contribution to indirect costs and taxes*, of approximately $77,000 annually. Based upon the same year, the report at another place says that to the extent that this service fails to meet the out-of-pocket cost and make *all the contribution that it reasonably can to respondent's indirect costs*, it increases the latter's passenger deficit and results in an undue burden on its freight operations. In finding 4 the report states that the prescribed fares are necessary so that the travel thereunder may make a *fair contribution toward respondent's indirect costs and return on investment*. If a *contribution* is to be made toward the satisfaction of an obligation, it is obvious that the extent of the obligation must be fixed; otherwise no one can know what the size of the contribution should be. We are here speaking of an involuntary contribution. The limitless requirements implicit in the parts just cited from the report are reminiscent of public fund raising campaigns which used as their slogan "Give till it hurts". That was a legitimate civic or patriotic appeal. However, we are here confronted with the imposition of an involuntary contribution being exacted by legal means. To be sustained, it must be based upon a finding of the extent of the obligation. It cannot be supported by a vague reference to an unascertained amount of "indirect costs and taxes" or what the suburban service can reasonably contribute to the Milwaukee Road's "indirect costs", or "a fair contribution toward respondent's indirect costs and return on investment".

3. We are confronted with the question of whether the evidence before the interstate commission supports its finding that the intrastate fares which it has prescribed will be just and reasonable for the future. This finding rests on an averment in the report that the comparison with the fares of the Chicago and North Western Railway Company is more persuasive, as, in the words of respondent's traffic witness, "there is a strong similarity between the suburban territory served by the Milwaukee Road and that served by the North Western, * * *".

The evidence of J. K. Pain, the traffic witnesses referred to, does not support this averment. He actually said that he believed there is a *difference* in the operation of the two roads and that he was not prepared on the subject of cost or expense, which was a little bit out of his line. He added that an endeavor was made to figure an increase on an equitable basis "that would recover our losses * * * and would be fair to the suburban passenger". When asked if Milwaukee Road's territory was "pretty similar" to North Western's, Mr. Pain asked, "Do you mean geographically or in operation or what?" When the examiner said that he was talking about the nature of the suburban community, the witness answered "Yes, you could probably say there is a strong similarity." Thereupon the attorney for the Milwaukee Road stated "we do not offer these North Western fares as a criteria (*sic*) as to what our fares should be".

There was no evidence offered showing similarity of equipment, service or operating conditions. On the other hand, the record shows that the lines are not comparable. The suburban North Western rates are based upon an operation of 72 steam locomotives and only 3 diesel locomotives as against a complete diesel operation on the Milwaukee. A comparison of the cost of the Milwaukee suburban operation under steam and diesel locomotives shows that the diesel operation costs less than steam. That a comparison cannot be properly made between a steam operation and a diesel operation has been recognized by the interstate commission in a case in which North Western Chicago suburban fares were raised to their present level, and the commission stated, in referring to the analysis upon which its order was based, "The above analysis relates to an existing suburban operation for the year 1951 and obviously does not contemplate the cost of some other suburban operation such as might be encountered with diesel engines, gallery-type cars and Budd cars."[8] Moreover, the interstate commission has taken note of the fact that the Milwaukee division of the North Western carries no freight whatsoever and that the entire cost there must be borne by passenger traffic. *Commutation Fares between Chicago and Wisconsin*, 279 I. C. C. 773, 777-778.

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[8] 288 I. C. C. 15, at 23.

The Milwaukee suburban operation is alleged to be much more comparable to the suburban operation of the Burlington and Rock Island than it is to the North Western operation. Those are the other two Chicago railroads using diesel locomotives in their suburban service. The commission, nevertheless, ignores that comparison, and holds, in effect, that the Illinois commission was wrong in giving weight to it. Instead, the proposed report applies the North Western formula without any evidence in the record of similarity of conditions necessary to make that formula applicable. The use of the North Western formula was not justified. Without sufficient evidence of comparability in operation, there is no ground for fixing the Milwaukee Road's fares at the North Western level, or for finding that the resulting fares are just and reasonable.

We hold that the evidence does not support the findings of the interstate commission that the prescribed rates are just and reasonable. Nor can a carrier justify unreasonably high rates on intrastate business on the ground that only in that way is it able to meet losses on its interstate business. *Dayton-Goose Creek Ry.* v. *United States*, 263 U.S. 456, at 483; *Smyth* v. *Ames*, 169 U.S. 466 at 541, 42 L. Ed., 819 at 847.

4. In the state commission proceeding, which was initiated by the Milwaukee Road, the latter showed in its exhibits that the depreciation of locomotives and coaches was not included in the out-of-pocket cost. Likewise, in its exhibits in that case it did not include in out-of-pocket expense certain maintenance of way accounts involving maintenance of facilities, such as roadbed, etc. The comments in the interstate commission's report, in regard to these items, show that they were by the Milwaukee Road deliberately removed from the consideration of the state commission. It follows that facts presented by Milwaukee Road to and relied upon by the interstate commission to support its finding as to an out-of-pocket suburban deficit, were not presented to nor relied on by the Milwaukee Road in the state commission proceeding. If different evidence is to be offered or a different basis of fares is to be urged before

the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.

In *North Carolina* v. *United States*, 325 U.S. 507, at 511, the court said:

> "Since the enactment of § 13 (4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate."

Where a railroad seeks the fixing of higher intrastate rates by the interstate commission after failing in such endeavor before a state commission, § 13 (4) does not contemplate that the state commission is to be considered only a way station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us.

Plaintiffs have made various other charges against the order of the interstate commission, which we do not find it necessary to decide, in view of the fact that our views herein expressed sufficiently decide the case now before us.

In this type of case we are not required, under rule 52(a), Federal Rules of Civil Procedure, or otherwise, to make findings of fact: *Despatch Shops* v. *Railroad Retirement Board*, 60 F. Supp. 106, affirmed 154 F. 2d 417; *In Re Chicago, M. St. P. & P. R. Co.*; *Abrams* v. *Scandrett*, 138 F. 2d 433.

For the reasons hereinbefore set forth, the order of the Interstate Commerce Commission is set aside and the subject matter thereof is remanded to that commission for further proceedings not inconsistent herewith. A permanent injunction will issue forthwith, as prayed.

APPENDIX B.

UNITED STATES OF AMERICA

DISTRICT COURT OF UNITED STATES
Northern District of Illinois
Eastern Division

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Plaintiffs,* v. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, *Defendants.*	No. 56 C 681.

DECREE.

This case has been heard on the complaint; the answers of defendants thereto; the record before the Interstate Commerce Commission in the proceeding known as Docket No. 31742 of that commission, and the arguments of counsel for plaintiffs and defendants, and the court being fully advised in the premises, ORDERS, ADJUDGES and DECREES:

1. The order of the Interstate Commerce Commission, dated March 2, 1956 (and the prior report and order dated November 21, 1955, upon which the order of March 2, 1956 was based) entered in proceeding Docket No. 31742, are beyond the power, and are an abuse of authority, of the Interstate Commerce Commission.

2. Said report and orders are not supported by the findings of, nor by the evidence before, the Interstate

Commerce Commission in the proceeding, commission's Docket No. 31742, in which they were entered.

3. Said report and orders of the Interstate Commerce Commission are void, and are set aside, and the subject matter is remanded to said Commission for further proceedings not inconsistent with the opinion this day filed herein.

4. The Interstate Commerce Commission is permanently enjoined from enforcing said report and orders, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company (herein called "the Milwaukee Road") is permanently enjoined from continuing to give effect to the fares prescribed therein.

5. The Milwaukee Road shall return forthwith to the persons from whom collected all monies received by it as excess fares under the order of this court dated April 18, 1956.

6. Judgment is entered in favor of Illinois Commerce Commission and Milwaukee Road Commuters' Association, and against the Milwaukee Road for costs.

(Sgd) ELMER J. SCHNACKENBERG
United States Circuit Judge

(Sgd) PHILIP L. SULLIVAN
United States District Judge

(Sgd) WALTER J. LA BUY
United States District Judge

Dated: June 14, 1956

APPENDIX C.

INTERSTATE COMMERCE COMMISSION.

No. 31742[1].

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD.

Decided November 21, 1955.

Respondent's intrastate fares within its Chicago, Ill., suburban area found to result in revenue discrimination against interstate commerce. Just, reasonable, and nondiscriminatory interstate and intrastate fares within said area prescribed. Outstanding orders in Nos. 26550 and 11703 modified accordingly.

R. K. MERRILL for respondent.

H. R. BEGLEY and WILLIAM J. GIBBONS for Illinois Commerce Commission.

E. B. WILKINSON, J. E. HART, and FLOYD L. THOMAS for interveners.

S. ASHLEY GUTHRIE and FRANCIS D. FISHER for protestant.

[1] This report embraces also, on further hearing, No. 26550, **Passenger Fares and Surcharges**, 214 I. C. C. 174, and No. 11703, **Intrastate Rates Within Illinois**, 59 I. C. C. 350.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions were filed by the Illinois Commerce Commission and by the protestant to the report proposed by the examiner, and the respondent replied thereto. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

This is an investigation, instituted upon petition of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, to determine whether its intrastate fares within its Chicago, Ill., suburban area, embracing points between and including Walworth, Wis., and Elgin, Ill., on the one hand, and Chicago Union Station, on the other, made or imposed by the Illinois Commerce Commission, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce, and to determine what fares, if any, or what maximum or minimum fares, should be prescribed to remove any unlawfulness that may be found to exist. The investigation also includes the question of whether the outstanding orders in No. 26550, *Passenger Fares and Surcharges*, 214 I. C. C. 174, prescribing the maximum interstate one-way and round-trip fares in the above area, and in No. 11703, *Intrastate Rates Within Illinois*, 59 I. C. C. 350, prescribing the minimum intrastate one-way and round-trip fares in said area, as subsequently modified, including the modifications made in connection with *Increased Passenger Fares, Western Railroads*, 269 I. C. C. 281, and *Increased Coach Fares on Western Railroads*, 269 I. C. C. 632, should be further modified so as to permit the establishment and maintenance of the increased interstate and intrastate one-way and round-trip fares hereinafter described.

The Northern Indiana Coal Traffic Association, Wisconsin Paper and Pulp Manufacturers Traffic Association, and Wisconsin Canners Association, organizations of shippers

and receivers of freight in interstate and intrastate commerce over the lines of the respondent and other railroads, adduced evidence in its behalf. The Milwaukee Road Commuters Association, an association of commuters in its Chicago suburban area, hereinafter called protestant, adduced evidence in opposition.

Respondent's present interstate and intrastate coach fares as prescribed in the proceedings above cited between points in this area are made 2.5 cents per mile, minimum 15 cents, with round-trip fares made 180 percent of the one-way fares. Its present 10-trip fares are made 5 times the round-trip fares, 25-trip fares 11.5 times the round-trip fares, and commutation fares on the basis of the so-called old North Western basis, as approved for intrastate application in Illinois Commerce Commission Docket No. 38377, decided September 18, 1951, heard jointly with our No. 30765, *Illinois Intrastate Multiple Ride and Commutation Fares*, the latter proceeding having been discontinued on respondent's request, upon its establishment of interstate multiple-ride and commutation fares in this area on the same basis as had been approved by the Illinois Commission for intrastate application. The old North Western basis had been approved by this and the Illinois Commission for interstate and intrastate application between points in the Chicago suburban area of the Chicago and North Western Railway Company, called the North Western, in *Commutation Fares Between Chicago and Wisconsin*, 279 I. C. C. 773 (1950), and related State proceeding. In 1953, that basis was increased an average of about 20 percent, upon application of the North Western, in *Commutation and Multiple Fares, Illinois and Wisconsin*, 288 I. C. C. 15, and related Illinois proceeding.

Effective July 25, 1955, with the approval of this and the Illinois Commission, the North Western increased the minimum fare within its suburban area in connection with all types of tickets to 25 cents per trip. The two Commissions have cooperated in approving uniform fares for most of the other suburban lines serving the Chicago area. See *New York Central Commutation Fares, Chicago and Ind.*,

279 I. C. C. 188 (1950), *Minimum Passenger Fares, Chicago N. S. & M. Ry. Co.*, 279 I. C. C. 628 (1950), *Chicago S. S. & S. B. Fares*, 279 I. C. C. 663 (1950), *Increased Passenger Fares, Chicago, N. S. & M. Ry. Co.*, 284 I. C. C. 221 (1952), *Illinois Central Multiple Fares in Chicago Area*, 281 I. C. C. 537, 289 I. C. C. 133 (1953), *Fares, Chicago S. S. & S. B. R.*, 291 I. C. C. 665 (1954).

In 1952, however, the instant respondent, instead of filing petitions or schedules with both Commissions, so that like cooperative action could be taken, filed a petition with the Illinois Commission only, requesting—

> authority to discontinue all off-peak Chicago suburban passenger trains and consolidate certain peak-hour trains and also to increase one-way, round-trip and commutation fares to such extent as will after taking into consideration the economy effected by such discontinuances and consolidation of trains, give respondent sufficient revenues to permit operation of the Chicago suburban service without an out-of-pocket loss.

By order dated November 10, 1954, after extensive hearings, the Illinois Commission found, based on respondent's own showing, modified to reflect the change in its suburban operations from steam to diesel during the pendency of the proceeding, with certain adjustments with respect to the Union Station and credits for nonrevenue passengers, that respondent's suburban service was already being operated without an out-of-pocket loss and therefore denied its request in toto. Thereupon, respondent filed the petition with us as a result of which the instant proceeding was instituted.

Respondent now seeks a modification of the outstanding orders in Nos. 26550 and 11703, and a new section 13 order authorizing it to increase its interstate and intrastate fares within the Chicago suburban area as follows:

One-way fares to be increased from 2.5 cents per mile, minimum 15 cents, to 3.2 cents per mile, minimum 25 cents, and round-trip fares to be increased from 180 percent of the

present one-way fares to 180 percent of the proposed one-way fares, resulting in an average increase of 26.9 percent, or about $113,312 annually; 10-ride fares to be increased from 5 times the present round-trip fares to 5 times the proposed round-trip fares, reflecting an average increase of 27 percent, or about $27,525 annually; 25-ride fares to be increased from 11.5 times the present round-trip fares to 12.5 times the proposed round-trip fares, reflecting an average increase of 36.1 percent, or about $118,336 annually; and commutation fares to be increased 40 percent, subject to maxima of $1.60, $5.75, and $6.40, in connection with the weekly, 46-ride monthly, and unrestricted monthly commutation fares, respectively, resulting in an average increase of 27.4 percent, or about $258,913 annually.

The average increase in all fares in the suburban area would be 28.8 percent, or a total of about $518,086 annually, the annual-increase estimates being based on the 1954 volume. The one-way, round-trip, and 10-trip fares apply, and would continue to apply, between all points in the suburban area, while the 25-trip and commutation fares apply, and would continue to apply, between the Union Station, on the one hand, and other points in the suburban area, on the other. The only interstate fares in issue are those to and from Walworth and Zenda, Wis., which are the only points in the suburban area located outside of the State of Illinois. The present, proposed, and prescribed fares are set forth in table I of the appendix to this report.

Respondent and protestant presented comprehensive studies, based on the year 1954, of the cost of the service, which are summarized in table II of the appendix. Both studies have been adjusted to reflect the complete conversion of the suburban operations from steam to diesel which took place on September 1, 1954. It will be noted that on an out-of-pocket basis respondent shows a deficit of $724,511, while protestant shows an income of $9,701. For expenses other than the Union Station, protestant's lower figures are accounted for by the elimination of any allowance for depreciation and of certain accounts for maintenance of way not included in respondent's study before the Illinois Commission.

Respondent operates 18 diesels in this suburban service, acquired at various dates from 1946 to 1954, at an original cost of $4,166,572, with accrued depreciation of $932,041, and an annual depreciation charge of $155,162, at the approved rate of 4.9 percent. It operates 131 coaches in this service acquired at various dates from 1900 to 1929, at an original cost of $2,627,153, with accrued depreciation of $2,334,404, and an annual depreciation charge of $39,842, at approved rates of from 1.7 to 3.18 percent. Protestant apparently considers these and the other depreciation charges not to be out-of-pocket costs because they do not represent cash outlays, but they are proper direct charges to the service in which the equipment or other property is used, and hence are out-of-pocket costs just as much as cash outlays for wages or materials.

The same observation applies to the accounts under maintenance of way not included in respondent's showing before the Illinois Commission but included here. Respondent's explanation for the prior omission was its impression that even without them it had shown a considerable deficit from this service. This explains but does not excuse its incomplete showing before the Illinois Commission.

On this record, we can accept respondent's figure of $2,270,161, reduced 3.2 percent[2], or to $2,197,516, as the out-of-pocket cost of the passenger-carrying portion of the suburban service, excluding nonpayroll taxes, return on investment, and Union Station expenses.

This leads us to a discussion of the Union Station expenses. The Chicago Union Station Company is owned jointly by The Pennsylvania Railroad Company, The Chicago, Burlington and Quincy Railroad Company, called the Burlington, and the respondent, the former owning 50 percent and each of the others 25 percent. The railroads using the Union Station facilities are obligated under the terms of an agreement between the proprietary companies to pay the wheelage proportion of the operation of the station, the wheelage proportion being that portion which the

[2] Or by $72,645, the out-of-pocket cost of the head-end service, computed on a car-foot-mile basis.

number of each railroad's locomotives and cars using the station and facilities during each month bears to the total number of locomotives and cars of all the users, each locomotive to be counted as 2 cars and each suburban coach as 4/5 of a car. The Chicago and Alton Railroad Company (now the Gulf, Mobile and Ohio Railroad Company) was admitted to use of the Union Station by agreement of September 18, 1915. This contract, insofar as it is here applicable, requires the Gulf, Mobile & Ohio also to pay a wheelage proportion of the Union Station operating expenses, without, however, the benefit of the reduced car count on suburban cars.

Respondent's figure of $305,530 as the out-of-pocket cost of this service for the use of the Union Station is the so-called relievable cost; that is, the payment it would be relieved of under the contract if it did not have the suburban service. Protestant's figure of $44,325, on the other hand, is based on a study of respondent's portion of the expenses which would be saved if there was no suburban service at all into the station. This basis is the same as that originally presented by respondent before the Illinois Commission and approved in numerous prior proceedings, and we see no reason for not approving it here. However, here again, protestant has improperly deducted depreciation charges in the amount of $27,563, which if added to the figure of $44,325, results in a total of $71,888. We can accept this amount as the out-of-pocket cost of this service, not including nonpayroll taxes or return, for the use of the Union Station.

The remaining difference between the cost studies of respondent and protestant consists of the different adjustments made for nonrevenue passengers, specifically nonsuburban employees who travel to and from work under passes issued as a customary part of their compensation, respondent's figure being $17,928 and protestant's $173,265. Respondent's figure is based on its operating witness' estimate that the nontransportation of these nonsuburban employees would only save the use of two cars in each direction on its west line and one car in each direction on its

north line. Protestant's figure is based on its computation of the pro rata cost of transporting these nonsuburban employees based on data available of record. The ticket-selling and collection expense and liability for personal injuries is somewhat less in the case of pass than in the case of revenue passengers. Based on the method approved in the first report in *Illinois Central Multiple Fares in Chicago Area, supra*, at page 547, we find that the proper adjustment for this purpose is $164,226.

Summarizing, the total revenues from the passenger-carrying portion of the suburban service were $1,799,140, the out-of-pocket cost, not including nonpayroll taxes or return, was $2,269,464, and the credit for nonrevenue passengers $164,226, resulting in a total out-of-pocket deficit of $306,038.

If the fares were increased an average of 20 percent as in *Commutation and Multiple Fares, Illinois and Wisconsin, supra*, plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually.

Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the Commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as in the words of respondent's traffic witness there is "a strong similarity" between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois Commission, having formerly been on a parity.

Respondent shows that its suburban traffic has changed little in recent years and thus urges that the 1951 increase had no adverse effect on the movement of the traffic. It does not follow that the drastic increases now proposed, particularly for distances over 9 miles, would have no such adverse effect. There is no adequate support for the proposed increase in the 25-ride fares from 11.5 to 12.5 times the round-trip fares. We found that a similar increase proposed by the North Western, by discouraging travel, would not result in a substantial increase in revenue, and a like finding is warranted here.

According to the respondent, in 1954 railway costs were 149 percent, living costs 92 percent, and the average hourly earnings in manufacturing industries were 172 percent, higher than in 1940, as compared with the average increase made in its suburban fares in the same period of 69 percent, and 119 percent as proposed. However, compared with 1950, which was the basis of its cost study presented in No. 30765 and the related State proceeding, railway costs have increased 11.5 percent, living costs 4 percent, and hourly earnings 12.5 percent.

In 1954, in terms of net railway operating income, respondent earned from its freight operations $37,393,050, and suffered a deficit from its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, state and interstate. This, of course, is the reason for the appearance of the freight shippers in this proceeding.

The one-way and round-trip fares here approved for respondent's suburban area, like those approved for the North Western and the Illinois Central, will be at a higher rate per mile than the corresponding fares to and from its non-suburban points. However, as we said of the North Western, this will be offset by the fact that

respondent's multiple and commutation fares for the longer hauls in the suburban area will be at a lower rate per mile than any of its non-suburban fares. Counsel for the Illinois Commission acknowledges that "perhaps the allowance of a minimum fare of 25 cents per trip and one-way fares based on approximately a 3-cent mile could be established to allow respondent 'similarity' with the North Western."

Protestant points out that the deficit from the respondent's total passenger operations is relatively greater than from its suburban operations; but as we said of a similar situation on the Illinois Central, the fact that respondent cannot make a profit or at least so far has been unable to make a profit on its other passenger-train service is no reason for depriving it of an opportunity to make a profit on its suburban operations if it can be done at lawful fares.

We find:

1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.

2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13(4) of the Interstate Commerce Act.

3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it,

under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future.

6. That the outstanding orders in Nos. 26550 and 11703 should be modified accordingly.

An appropriate order affecting the interstate fares will be entered, including appropriate modifications of the outstanding orders in the proceedings referred to. No affirmative order affecting the intrastate fares will be entered at this time; the respondent and the Illinois Commission are given a period of 60 days in which to adjust the intrastate fares on the bases prescribed herein, failing which consideration will be given to the entry of an affirmative intrastate order.

COMMISSIONER ARPAIA concurs in the result.

FREAS, *Commissioner*, concurring in part:

I cannot subscribe to that portion of this report which prescribes fares higher than those sought.

CHAIRMAN CROSS did not participate in the disposition of the proceeding.

APPENDIX

TABLE 1

Unrestricted Monthly Communation Fares Present, Proposed, and Prescribed

Between Chicago (Union Sta.), Ill., and	Distance	FARES Present	Proposed	Prescribed
Western Division	Miles			
Hermosa, Ill.	6.1	$ 7.20	$10.10	$15.00
Cragin, Ill.	7.2	8.40	11.80	15.00
Hanson Park, Ill.	7.9	9.60	13.45	15.00
Galewood, Ill.	8.8	10.20	14.30	15.00
Mars, Ill.	9.3	10.20	14.30	15.00
Mont Clare, Ill.	9.7	10.80	15.15	15.00
Elmwood Park, Ill.	10.4	10.80	15.15	15.00
River Grove, Ill.	11.6	11.80	16.55	15.00
Franklin Park, Ill.	13.4	12.30	17.25	15.40
Mannheim, Ill.	14.2	12.80	17.95	16.20
Bensenville, Ill.	17.4	14.30	20.05	18.20
Wooddale, Ill.	19.3	15.20	21.30	19.40
Itasca, Ill.	21.2	16.00	22.40	20.40
Medinah, Ill.	23.2	16.80	23.20	21.20
Roselle, Ill.	24.6	17.60	24.00	22.00
Ontarioville, Ill.	28.6	19.20	25.60	23.60
Bartlett, Ill.	30.3	19.60	26.00	24.00
Spaulding, Ill.	32.9	20.80	27.20	25.20
Elgin, Ill.	36.8	22.40	28.80	26.80
Northern Division				
Healy, Ill.	6.4	$ 7.20	$10.10	$15.00
Grayland, Ill.	8.2	9.60	13.45	15.00
Mayfair, Ill.	9.0	10.20	14.30	15.00
Forest Glen, Ill.	10.2	10.80	15.15	15.00
Edgebrook, Ill.	11.3	11.30	15.85	15.00
Morton Grove, Ill.	14.3	12.80	17.95	16.20
Golf, Ill.	16.2	13.80	19.35	17.60
Glenview, Ill.	17.4	14.30	20.05	18.20

Between Chicago (Union Sta.), Ill. and	Distance	FARES Present	Proposed	Prescribed
Northern Division	Miles			
Techny, Ill.	20.3	15.60	21.85	20.00
Northbrook, Ill.	20.9	16.00	22.40	20.40
Deerfield, Ill.	23.9	17.20	23.60	21.60
West Lake Forest, Ill.	28.0	18.80	25.20	23.20
Rondout, Ill.	32.3	20.40	26.80	24.80
Libertyville, Ill.	35.5	22.00	28.40	26.40
Grays Lake, Ill.	41.0	24.00	30.40	28.40
Round Lake, Ill.	44.0	25.20	31.60	29.60
Long Lake, Ill.	46.0	26.00	32.40	30.40
Wilson Road, Ill.	46.7	26.40	32.80	30.80
Ingleside, Ill.	47.8	26.80	33.20	31.20
Fox Lake, Ill.	49.5	27.60	34.00	32.00
Spring Grove, Ill.	53.7	29.20	35.60	33.60
Solon Mills, Ill.	55.8	30.00	36.40	34.40
Belden, Ill.	59.4	31.60	38.00	35.60
Hebron Siding, Ill.	61.8	32.40	38.80	36.80
Zenda, Wis.	67.4	34.40	40.80	38.80
Walworth, Wis.	73.5	37.20	43.60	41.60

Bases prescribed for other types of fares.

Subject to a minimum of 25 cents per trip in connection with all types of fares:

Between all points in the suburban area, one-way fares shall be based on 3 cents per mile, round-trip fares shall be 180 percent of the one-way fares, and 10-trip fares shall be 5 times the round-trip fares.

Between Chicago Union Station, on the one hand, and all other points in the suburban area, on the other, 25-trip fares shall be 11½ times the round-trip fares, and weekly and 46-trip commutation fares, respectively, shall be 25 and 90 percent of the unrestricted monthly fares, subject to maxima of 6 and 23 times the round-trip fares.

APPENDIX

TABLE II

Summary of Out-of-Pocket Cost Studies

1954

	Respondent	Protestant
Operating Revenues	$1,833,252	$1,865,055
Operating Expenses:[1]		
Maintenance of Way & Structures	93,913	22,210
Maintenance of Equipment	647,265	441,525
Traffic	3,573	3,573
Transportation	1,517,031	1,508,607
General	8,379	8,379
Total[2]	$2,270,161	1,984,294
Union Station	305,530	44,325
Credit for non-revenue passengers	17,928	173,265
Deficit or Income	$ 724,511[3]	$ 9,701[4]

[1] Including payroll taxes.
[2] Excluding Union Station.
[3] Deficit.
[4] Income.

APPENDIX D.

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 21st day of November, A.D. 1955.

No. 31742

Chicago Intrastate Suburban Fares Of
Milwaukee Railroad

No. 11703

In The Matter Of Intrastate Rates Within
State Of Illinois

No. 26550

Passenger Fares And Surcharges

It appearing, That, by order dated March 4, 1955, the Commission instituted an investigation into the lawfulness of the interstate and intrastate fares within the Chicago suburban area of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, including the question of whether the outstanding orders in Nos. 11703 and 26550, as previously modified, should be further modified in certain respects;

And it further appearing, That such investigation has been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That respondent Chicago, Milwaukee, St. Paul and Pacific Railroad Company be, and it is hereby, authorized to establish, upon not less than 30 days' notice, interstate fares within said suburban area on the bases set forth as prescribed in said report.

It is further ordered, That the outstanding orders in Nos. 26550 and 11703, as subsequently modified, be, and they are hereby, further modified so as to permit the establishment and maintenance of interstate and intrastate fares within said suburban area on the bases so prescribed.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(Seal)

APPENDIX E.

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 2nd day of March, A.D. 1956.

No. 31742

Chicago Intrastate Suburban Fares Of
Milwaukee Railroad
No. 11703

In The Matter Of Intrastate Rates Within
State Of Illinois
No. 26550

Passenger Fares And Surcharges

These proceedings having been duly heard and full investigation of the matters and things involved having been had, and this Commission having, on November 21, 1955, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and respondent and the Illinois Commerce Commission having been given a period of 60 days from the service of said report in which to adjust the intrastate fares in issue in this proceeding in accordance with the findings in said report:

And it appearing, That, on February 8, 1956, the Illinois Commerce Commission filed a petition for reconsideration of said report and for rehearing, that protestant Milwaukee Road Commuters' Association has filed a petition for reconsideration of said report, and that respondent has filed a reply to said petitions;

And it further appearing, That this Commission has given consideration to said petitions and reply, and has reached the conclusion that there has been presented no

showing of error of fact or law in said report, and that no sufficient grounds have been presented for the reconsideration and rehearing requested;

It is ordered, That the said petitions be, and they are hereby, denied;

It it further ordered, That respondent be, and it is hereby, notified and required to cease and desist on April 20, 1956, and thereafter to abstain, from practicing the undue, unreasonable, and unjust discrimination found to exist by Finding No. 2 of said report:

It is further ordered, That respondent be, and it is hereby, notified and required to establish on April 20, 1956, upon not less than 5 days' notice to this Commission and the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain for intrastate travel between points in respondent's Chicago suburban area within the State of Illinois fares no lower than the bases set forth in Finding No. 3 of said report;

And it is further ordered, That this order shall remain in effect until the further order of the Commission.

By the Commission.

HAROLD D. MCCOY
Secretary

(Seal)

APPENDIX F.

The Pertinent Provisions of the Interstate Commerce Act (United States Code, Title 49), Involved in this Case are as Follows:

National Transportation Policy—

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; —all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Section 13(3)—

"Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regu-

lation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III."

Section 13(4)—

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter

to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a(2)—

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

Office - Supreme Court, U.S.
FILED
SEP 28 1956
JOHN T. FEY, Clerk

No. ~~307~~ 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

BRIEF FOR APPELLANT IN OPPOSITION TO MOTIONS TO AFFIRM

W. J. QUINN,
EDWIN R. ECKERSALL,
Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

T. H. MAGUIRE,
R. K. MERRILL,
Of Counsel.

888 Union Station
Chicago 6, Illinois
September 26, 1956.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 307

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

BRIEF FOR APPELLANT IN OPPOSITION TO MOTIONS TO AFFIRM.

PRELIMINARY STATEMENT.

Two motions to affirm the judgment of the District Court have been filed by Appellees, one on behalf of the Illinois Commerce Commission, hereinafter called the "Illinois Commission", and the State of Illinois, hereinafter, together with the Illinois Commission, jointly called the "State"; the other by the Milwaukee Road Commuters' Association, hereinafter called the "Association". The judgment which enjoined two orders of the Inter-

state Commerce Commission, and which Appellees assert presents no substantial question, is based on three misrulings by the Court, *i.e.*:

1. The Interstate Commerce Commission, hereinafter called the "Interstate Commission", can not exercise its powers under Section 13(4) of the Interstate Commerce Act (49 U.S.C. Section 13(4).) to prescribe intrastate fares until the state commission has first had an opportunity to sit in judgment of their lawfulness on the same basis and evidence as presented to the Interstate Commission (Dist. Ct. Opinion, Jurisdictional Statement, pp. 23, 24).

2. The Interstate Commission must find what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income. (Dist. Ct. Opinion, Jurisdictional Statement, p. 18).

3. The evidence does not support a finding of the Interstate Commission that the prescribed fares are just and reasonable (Dist. Ct. Opinion, Jurisdictional Statement, p. 23).

1. ALLEGED REQUIREMENT THAT STATE COMMISSION HAVE OPPORTUNITY TO ADJUDGE LAWFULNESS OF FARES ON SAME EVIDENCE SUBMITTED TO INTERSTATE COMMISSION.

The State intimates that the District Court set aside the Interstate Commission's order solely for lack of necessary findings and evidence, and that the Court merely questioned Appellant's procedure before the Illinois Commission (pp. 6-9).[1] In direct contradiction to this sopo rific theory, however, are:

[1] Page numbers, unless otherwise specified, refer to the respective motions to affirm.

1. The insistence of the District Court (Dist. Ct. Opinion, Jurisdictional Statement, pp. 23, 24), the State (p. 7) and the Association (p. 16) upon the exclusive primary jurisdiction of the Illinois Commission over intrastate fares and its prior right to fix intrastate fares on the same evidence and basis as submitted to the Interstate Commission; and

2. The decree that the order fixing the intrastate fares was beyond the power of the Interstate Commission (Dist. Ct. Decree, Jurisdictional Statement, p. 25).

The State is completely unable (pp. 7, 8) to reconcile the holding of the District Court with that in *State of Florida* v. *United States*, 282 U.S. 194, quoted in the Jurisdictional Statement (p. 9), and ignored by the District Court, that the Interstate Commission has power to fix intrastate rates whether or not the state has first sat in judgment thereon.[2]

The exclusive authority of the Illinois Commission to determine the lawfulness under state law and the reasonableness *per se* of intrastate rates in no way conflicts with the exclusive authority of the Interstate Commission to determine whether the same rates discriminate against interstate commerce.

> "The plaintiffs and intervening petitioners have maintained that this court is without jurisdiction for the reason that the Illinois Commerce Commission reached a different conclusion upon the same facts and that there is now pending an appeal from its decision in the Circuit Court of Cook County.

[2] The Association merely suggests that the Florida case can be distinguished as "where one state challenges the rates of another" (p. 17). The Association fails to explain how the Interstate Commission's power over intrastate rates is enlarged when the Commission's jurisdiction is invoked at the request of a state rather than at the request of a carrier, or on its own motion.

> "It is sufficient for this court to point out that the result of that proceeding can in no way affect the jurisdiction of this court or the power and authority of the Interstate Commerce Commision. The Circuit Court of Cook County may sustain the Illinois Commerce Commission, but that makes no difference. The power and authority of the Illinois Commerce Commission and jurisdiction of the Circuit Court of Cook County are limited to interpreting and applying the statutes of the State of Illinois, creating and giving power to the Illinois Commerce Commission. It may very well be that, under the Illinois law, the Illinois Commerce Commission's report and finding are proper. Even if the Circuit Court of Cook County had already sustained the report of the Commission and the matter had been finally concluded the Interstate Commerce Commission would still have the power and authority under 49 U.S.C.A. § 13(4), to hear the petition in the instant case, and this court would have jurisdiction to determine whether or not the findings, conclusions and order of the Interstate Commerce Commission were founded upon and warranted by substantial evidence." *State of Illinois v. United States*, 101 Fed. Sup. 36, 40, affirmed 342 U.S. 930.

The foregoing quotation is from a unanimous opinion by another panel of judges, sitting as a three-judge court for the same district as the District Court herein, approving an Interstate Commission order fixing intrastate suburban fares of the Illinois Central Railroad in the Chicago suburban area.

Both the State (p. 7), and the Association (p. 17) purport to distinguish the *Illinois Central* case, as well as *State of North Carolina v. United States*, 128 Fed. Sup. 718, 724, affirmed 350 U.S. 805, as involving the Interstate Commission's jurisdiction over intrastate rates which are the subject of a court appeal from a state commission proceeding. If, as held in those cases, the

Interstate Commission is not deprived of power to remove discrimination against interstate commerce by intrastate rates prior to a final adjudication of their lawfulness under state law, even less reason exists to take away the Interstate Commission's power when no proceeding is pending, either before a court or a state commission.

The State speciously argues (p. 8) that if any effect is to be given to the very language of Section 13(3) of the Interstate Commerce Act requiring rates to be "made or imposed by authority of the State", the State Commission must be accorded the initial right to affix those rates. Section 13(3) does not require that any rate be made or imposed by authority of the State, but together with Section 13(4), provides that any rates so made or imposed which cause undue, unreasonable, or unjust discrimination against interstate commerce are unlawful and the Interstate Commission shall prescribe the rates to be charged which shall be observed by the carrier "the law of any state or the decision or order of any state authority to the contrary notwithstanding" (Jurisdictional Statement, pp. 45-47). No contention has ever been raised that Appellant's intrastate fares approved by the Illinois Commission in 1951, and found unlawful by the Interstate Commission, were not made and imposed by authority of the State of Illinois.

The State also argues that a carrier, if not required first to seek relief from the state commission on the same evidence and basis as submitted to the Interstate Commission, could file a reduced rate with the State Commission and then go to the Interstate Commission to have it set aside as discrimination against interstate commerce (p. 8). This argument, which assumes that any carrier would waste its money, time, and effort, in such a merry-go-round maneuver, is so frivolous as to be unworthy of the State.

Related to the question of whether the Interstate Commission has the power to fix Appellant's intrastate fares is the question raised by the State whether the scrupulous regards for the rightful independence of state governments which deter federal courts from enjoining state regulatory bodies (citing *Alabama Commission* v. *Southern Railway Co.*, 341 U.S. 341, 349) should equally operate to deter the Interstate Commission from using its authority to grant the extraordinary relief of a Section 13(4) petition in the instant proceeding (pp. 16, 17). The District Court, after discussing the procedure followed by Appellant before the Illinois Commission, concluded that justification for the exercise of the federal power to nullify state rates does not clearly appear from the record. (Dist. Ct. Opinion, Jurisdictional Statement, pp. 23, 24)

That the *Alabama* case has no application to a proceeding involving the exercise by the Interstate Commission of its power to fix intrastate rates under Section 13(4) is well expressed in the *Illinois Central* case, *supra*, *State of Illinois* v. *United States*, 101 Fed. Sup. 36, 40:

> "In the argument before this Court the case of *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U.S. 341, 71 S. Ct. 762, 767, 95 L. Ed. 1002, was urged as a recent case showing a different viewpoint on the problem of federal authority over intrastate activities. That case was not brought under the Transportation Act. No hearing occurred before the Interstate Commerce Commission under 49 U.S.C.A. § 13. The suit was one in which the plaintiff sought to go into a federal district court and enjoin the action of the Public Service Commission of the State of Alabama, which had entered an order refusing to permit the Southern Railway to discontinue certain trains. The court in a special footnote specifically stated: 'As the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. §13(4), 49

U.S.C.A. § 13(4), has not been invoked for decision as to whether the continuance of this intrastate service constitutes an undue discrimination against interstate commerce we cannot, in this proceeding, consider any impact the order of the Alabama Public Service Commission might have on interstate commerce.'

"It is therefore clear that the court did not intend its decision in that case to alter or change in any way the principles that have been consistently followed in the interpretation of the National Transportation Act."[3]

Moreover, in the *Illinois Central* case it was made clear that:

"* * * it was within the power of the Interstate Commerce Commission, *and it was its duty*, having found upon substantial evidence the existence of an unjust discrimination against interstate commerce, caused by the surburban fares in question which had been made and imposed under authority of the State of Illinois, to prescribe the rate or fare to be charged in the future in order to remove such unjust discrimination." (Emphasis supplied) (*State of Illinois v. United States*, 101 Fed. Sup. 36, 47).

It must, therefore, be concluded, contrary to the opinion of the Disfrict Court and Appellees, that:

1. The Interstate Commerce Commission had the power under Section 13(4) of the Interstate Commerce Act to fix Appellant's intrastate fares without regard to whether the Illinois Commission had first sat in judgment thereon on the same or different evidence than submitted to the Interstate Commission.
2. The Interstate Commission had a duty to exercise such power to eliminate undue, unreasonable, or un-

[3] Interstate Commerce Act.

> just discrimination against interstate commerce, which upon investigation it found to exist. "

These conclusions should make unnecessary a response to the remarks by both the State (pp. 3, 8, 9) and the Association (pp. 16, 17) indicating a willful withholding by Appellant of certain evidence from consideration by the Illinois Commission in the prior proceeding before it. To expunge any inference of bad faith, or that Appellant indulged in a sham proceeding before the Illinois Commission, the facts relating thereto are here set forth, as shown in the record before the Interstate Commission.

Contrary to the State's assertion (p. 2), Appellant did not in its petition to the Illinois Commission in July, 1952, specify any percentage of fare increase sought. Instead it asked for an increase which, together with savings from discontinuance and consolidation of trains for which authority of the Illinois Commission was concurrently sought, would eliminate Appellant's out-of-pocket loss (ICC Report, Jurisdictional Statement, p. 30). Appellant offered evidence before the Illinois Commission for which the total time required was not over two days. The Illinois Commission, however, permitted the hearings to drag out, over Appellant's objections, until July, 1953. The evidence showed an out-of-pocket loss at the time of the hearings of over one million dollars a year, but despite the pressing need of Appellant for relief from its huge loss, the Illinois Commission refused Appellant a decision until November, 1954, one year and four months after the close of hearings, despite repeated unfavorable comment for lesser delays in other proceedings by both state and federal courts (*Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587; *Chicago B. & Q. R. Co. v. Illinois Commerce Commission, et al.*, 82 Fed. Sup. 368, 375; *Pullman Co. v. Illinois Commerce Commission*, 390 Ill. 40, 60 N.E.

2nd 232). It then denied Appellant the right to discontinue any of its money-losing trains, and denied Appellant any fare increase. It attempted to justify the denial by ignoring approximately $290,000 of Chicago Union Station expenses of which Appellant would be relieved if the suburban service were discontinued, and by finding that through dieselization Appellant could effect a million-dollar annual savings and thereby supposedly eliminate its loss.

The State contends that items of depreciation and maintenance of way expenses, totaling over $250,000 of the out-of-pocket loss of $306,038 found by the Interstate Commission, were withheld by Appellant from its case before the Illinois Commission (pp. 2, 3). Of this $250,000 approximately 62% or over $155,000 (ICC Report, Jurisdictional Statement, p. 32) represents depreciation of modern diesel locomotives assigned to suburban service subsequent to the hearings before the Illinois Commission. (This is also an expense that the Illinois Commission failed to consider in computing Appellant's dieselization savings).

The remaining expenses of $95,000, representing depreciation of coaches and a portion of maintenance of road and track expenses which vary with use, were presented to the Interstate Commission in accordance with the formula for computing costs of suburban service published by the Interstate Commission's Bureau of Transport Economics and Statistics. This formula treats out-of pocket expenses of suburban service as those of which a carrier *over a period of time* would be relieved if the service were discontinued. In view of its million-dollar a year loss based upon *immediately* relievable expenses alone, and the substantial fare increase then necessary

to eliminate such loss, Appellant did not ask to recover the relatively small items of expense that over a period of time were relievable.

Inasmuch as the variance in evidence before the Interstate Commission from that submitted to the Illinois Commission occurred principally because of changes during the long two-year and four-month period that Appellant vainly sought action on its petition to the Illinois Commission, the criticism directed toward Appellant by the District Court, the Association, and, strangely, the State itself, is entirely unwarranted.

2. ALLEGED ABSENCE OF NECESSARY FINDING TO SUPPORT INTERSTATE COMMISSION'S ORDER.

The State describes as "basic and necessary", a finding of the amount of contribution from intrastate traffic which would constitute a fair proportionate share of the carriers' total income (p. 11). None of the ensuing quotations support the statement. The quotations do, however, emphasize that intrastate traffic must bear a fair proportionate share of the cost of maintaining an adequate railway system. Had the sentence quoted by the State (p. 11) from *King* v. *United States*, 344 U.S. 254, 270, been completed, it would be seen that the full obligation includes a contribution of a

> "fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property directed to the transportation service, both interstate and intrastate."[1]

In *Wisconsin* v. *Chicago B. & Q. R. Co.*, 257 U.S. 563, cited by the State, necessary findings were not discussed.

[1] See also **North Carolina v. United States**, 325 U.S. 507, 520; **United States v. Louisiana**, 290 U.S. 70, 75.

In *Florida* v. *United States*, 282 U.S. 194, the Court did declare invalid part of an order of the Interstate Commission fixing intrastate fares for want of findings as to—

1. The revenue which had been derived by the carrier from the traffic in question.
2. The revenue which could reasonably be expected under the increased rates.
3. Whether the alteration of the intrastate rates would produce or was likely to produce additional income necessary to prevent a burden upon the carriers' interstate revenue and maintain an adequate transportation system. (282 U.S. 194, 214, 215).

All of these findings or their equivalent were made in the instant proceeding (ICC Report, Jurisdictional Statement, pp. 34, 36). No reference is made by the Court in the *Florida* case to the need of any finding concerning what amount of contribution is necessary as a fair proportionate share of the carriers' total income.

In *North Carolina* v. *United States*, 325 U.S. 507, the Court also set aside an Interstate Commission order fixing intrastate fares, for want of adequate findings. The Court found insufficient the Interstate Commission's "conclusion" that intrastate traffic was not contributing its fair share of the revenue required to render adequate and efficient transportation service. It indicated that specific findings by the Interstate Commission were necessary, *i.e.*, that the intrastate rates were less than compensatory or insufficient to cover the full cost of service and that the maintenance of the prescribed rates were necessary to the operation of a nationally efficient and adequate railway system (325 U.S. 507; 514, 515). Findings of this nature were made by the Interstate Commis-

sion in the present proceeding (ICC Report, Jurisdictional Statement p. 36).

As stated in *King* v. *United States*, 344 U.S. 254, 274, the Court in the *North Carolina* case (325 U.S. 507) mentioned, but did not make indispensable, the findings in dollars which were absent, including the finding "as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income"; and in the *King* case itself, no such finding was required.

The Association attempts to distinguish the *King* case by claiming that an express finding was made therein as to the relationship between the revenue produced by intrastate rates, and the railroads' total income (p. 13). In its report in that proceeding, 278 I.C.C. 41, the Interstate Commission made no finding whatever concerning the total revenues of the railroads involved, individually or collectively. On page 65, it did refer to their combined net railway operating income, and the additional revenues from the increased rates sought. In the present proceeding the Interstate Commission also made findings as to Appellant's net railway operating income, the additional revenue from the increase in fares sought, as well as the additional revenue from the increased fares prescribed (ICC Report, Jurisdictional Statement, pp. 31, 34, 35).

The Interstate Commission, therefore, has made the findings declared essential in the cases cited by Appellees, in none of which cases was a finding required as to what contribution from intrastate traffic would constitute a fair proportion of a carrier's income.

Even were a finding of such nature required, the alternative finding which both the Court (Dist. Ct. Opinion, Jurisdictional Statement, p. 18) and the State (p. 12) have indicated would be sufficient, *i.e.*, that the revenue

produced by the prescribed intrastate fares will constitute not more than a fair proportion of Appellant's total income, has in effect been made. The Interstate Commission found (ICC Report, Jurisdictional Statement, pp. 36, 37) that the intrastate fares prescribed—

> "are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service."

How obviously short the prescribed fares fall of exceeding a fair proportion of Appellant's income will be seen from the discussion in the following section of this reply.

3. ALLEGED LACK OF EVIDENCE TO SUPPORT A FINDING THAT PRESCRIBED FARES ARE JUST AND REASONABLE.

The Association at the outset of its argument (p. 9) tries to restrict the scope of the Court's review on this appeal by a quotation from *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490, 491, stating that the determination of whether substantial evidence exists to support a finding of the National Labor Relations Board has been placed in the keeping of the Court of Appeals. The Association then decides that doctrine is applicable to the present proceeding. Apparently no notice was given the companion case of *National Labor Relations Board* v. *Pittsburgh Steamship Company*, 340 U.S. 498, 502, 503, decided the same day, wherein the Court said:

> "Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject

that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders. 'The jurisdiction of the court [of appeals] shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review . . . by the Supreme Court of the United States upon writ of certiorari . . .' Taft-Hartley Act § 16 (e), 61 Stat. 148, ch. 120 29 U.S.C. (Supp. III) § 160 (e). Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.' *Layne & Bowler Corp.* v. *Western Well Works*, 261 U.S. 387, 393, 67 L. ed. 712, 714, 43 S.Ct. 422; Revised Rules of the Supreme Court of the United States, Rule 38(5)."

It is the function of this Court in appeals from three-judge court decisions enjoining or affirming orders of the Interstate Commission, to determine whether there was substantial evidence to support the Interstate Commission's findings. Where the order of the Interstate Commission is supported by substantial evidence, this Court will reverse a decree by the District Court enjoining the order. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U.S. 541, 547, 548; *United States* v. *American Sheet and Tin Plate Co.*, 301 U.S. 402, 411.[5]

[5] As stated in *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 477:

> "In the latter case, the court said,
> "We are unable to say that the findings in respect of the individual plants lacked support in the evidence. We are, therefore, bound to accept them and to hold the orders lawful."

"'substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U.S. 197, 229, 83 L. ed. 126, 149, 59 S.Ct. 206. Accordingly, it 'must do more than create a suspicion of the existence of the fact to be established. . . . It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300, 83 L. ed. 660, 665, 59 S.Ct. 501."

There was, in addition to the evidence of fares of the Chicago and North Western Railway, which serves territories between and adjacent to territories served by Appellant, abundant evidence from which the Interstate Commission could find that the prescribed fares are just and reasonable. The State attempts to dismiss such evidence by arguing that it can not sustain the assumption of jurisdiction by the Interstate Commission (p. 15). The question, however, of whether the Interstate Commission has jurisdiction is entirely distinct from whether the fares it has prescribed are just and reasonable.

The Interstate Commission's report itself shows there was comprehensive evidence before it of the out-of-pocket and fully distributed costs of performing the service; equipment required by the suburban operation; fares in effect on other railroads serving the Chicago area; non-suburban fares of Appellant; and percentage increases in earnings of industrial employees more than double the increases in Appellant's fares for the like period of 1940—1954 (ICC Report, Jurisdictional Statement, pp. 31, 33, 34, 35, 36).

In addition the Interstate Commission had before it evidence showing higher fares for slower service via other carriers between points served jointly with Appellant; the schedules of trains, the trackage, maintenance and repair facilities, passenger stations, and trains crews utilized in the suburban operation; the conflict of suburban operations with through passenger and freight operations; and the large amount of unproductive time of equipment and personnel incident to moving thousands of people within the short periods of the morning and evening rush hours over distances ranging between 3 and 73 miles (Transcript of testimony before Interstate Commission, pp. 8-24).

It is thus patent that the Interstate Commission had much more before it than merely the fares of the Chicago and North Western Railway upon which to base its expert judgment in fixing Appellant's fares. In the exercise of that judgment, however, it restricted Appellant's fares to the North Western level. Appellant properly took the position before the Interstate Commission that such increase was substantially less than the evidence justified, as reflected by the statement of its attorney quoted by the District Court (Dist. Ct. Opinion, Jurisdictional Statement, p. 22) and the State (p. 10). Appellant's present position, seeking to preserve the partial relief granted, is no less consistent and much more understandable than the State's position that Appellant is not entitled to any fares on the North Western level, especially in view of the State's concession before the Interstate Commission that—

> " * * * perhaps the allowance of a minimum fare of 25 cents per trip and one-way fares based on approximately a 3-cent mile could be established to allow respondent 'similarity' with the North Western." (ICC Report, Jurisdictional Statement, p. 36).

It is apparent from the District Court's opinion that it was under the misapprehension that the fares prescribed would be "paying all of the costs of suburban service and, in addition, making a contribution to the other costs of the railroad * * *". (Dist. Ct. Opnion, Jurisdictional Statement, pp. 19, 20). The true cost of transportation consists of both direct and indirect expenses and includes not only the out-of-pocket or relievable costs, but also a fair allocation of costs incurred jointly with other traffic.

> "We say this, for we entertain no doubt that, in determining the cost of the transportation of a particular commodity, all the outlays which pertain to it must be considered. We find no basis for distinguishing in this respect between so-called 'out-of-pocket costs,' or 'actual' expenses, and other outlays which are none the less actually made because they are applicable to all traffic, instead of being exclusively incurred in the traffic in question." (*Northern Pacific Ry. Co.* v. *North Dakota*, 236 U.S. 585, 596.)

In addition to its out-of-pocket costs, the uncontested evidence shows additional costs fairly allocable to the suburban service of over $1,100,000 per year. The fares prescribed would make a contribution of but approximately $77,000 to these costs. There is no basis, therefore, for any concern that the prescribed fares will enable Appellant to recoup even the full cost of the suburban service, much less a return on investment or contribution to other costs.

The Interstate Commission's report is unfairly characterized by the State as taking the position that suburban fares should be fixed on the basis of "how much the traffic will bear" (p. 15). The Interstate Commission correctly

stated, in effect, that to the extent the suburban service fails to meet all of the out-of-pocket costs as well as the indirect costs of the suburban operation, to the extent it reasonably can, it increases Appellant's passenger deficit and results in undue burden upon its freight operation. Such a position in no way conflicts with the statement in *Dayton Goose Creek Ry. Co.* v. *United States*, 263 U.S. 456, 483, that a carrier can not justify unreasonably high rates on intrastate traffic to meet losses on its interstate business.

The State (p. 10) also attempts to justify the Court's conclusion that without sufficient evidence of comparability in operation, there is no ground for fixing the Milwaukee Road's fares at the North Western level or for finding that the resulting fares are just and reasonable. The State contends that the Interstate Commission itself has recognized that there must be some similarity of operation to justify comparability of fares, citing *Commutation and Multiple Fares between Illinois and Wisconsin*, 288 I.C.C. 15.[6] It is difficult to imagine a case less helpful to the State's position. The Interstate Commission therein prescribed the same interstate suburban fares in 1953 for the North Western, a steam and diesel-operated railroad, and the Chicago North Shore and Milwaukee Railway, an electric interurban line. In so far as the report discusses operating conditions, *i.e.*, equipment and power used, it indicates far less similarity between those two

[6] The only additional authority that the State produced was a State Court case dealing with the determination of the reasonableness of rates under state law, and involved whether the Illinois Commission could disregard as immaterial the question whether the compared rates were for a switching or line haul service. **Moline Consumers Coal v. Illinois Commerce Com.**, 353 Ill. 119, 126.

lines than exists between the Appellant and the North Western (288 I.C.C. 15, 16, 17, 26).

Not only did the Interstate Commission prescribe the same interstate fare levels for the North Western and the North Shore, but the Illinois Commission, in a related proceeding, and in a almost identically worded order, prescribed the same levels of intrastate fares. (ICC Report, Jurisdictional Statement, p. 29; unreported order, Nov. 10, 1954, Illinois Commission Dockets 40349 and 40429). The orders of the Interstate Commission, which now finally accord Appellant the same level of fares granted in 1953 to the North Western and North Shore, have largely corrected the lack of uniformity of fares mentioned by the State (p. 10) in the areas north and northwest of Chicago served by the three carriers.

4. INTERSTATE FARES.

The only justification offered by the Association for the setting aside by the District Court of the Interstate Commission's order fixing Appellant's interstate fares is that such fares were only incidentally involved, and Appellant's request for an increase thereof was conditioned on a like increase in the intrastate fares (p. 3). The interstate and intrastate fares were ordered and placed into effect independently of each other. The Interstate Commission's order of November 24, 1955 fixed only the interstate fares (Jurisdictional Statement, pp. 41, 42) which became effective January 29, 1956. The Interstate Commission's order of March 2, 1956 fixed only intrastate fares (Jurisdictional Statement, pp. 43, 44) which became effective April 20, 1956.

The record before the Interstate Commission in the instant proceeding shows that in 1955 most of the North Western's and all of appellant's suburban trains were diesel-powered. (Transcript of testimony before Interstate Commission, p. 367, 368).

The State's arguments (p. 16) are also without merit. First, Appellant did not join in the motion to correct the Court's order, not because it thought unsubstantial the setting aside of its interstate fares, but because it felt that more than a mere clerical error was involved. Second, in addition to the one suburban train in each direction serving the Wisconsin points, two additional through trains in each direction, as shown by the record before the Interstate Commission, carry passengers at the fares involved in this proceeding between Walworth and Chicago. Third, the State's assumption that the interstate fares must fall or stand with the intrastate fares, ignores the fact that the first two grounds for the District Court's order (p. 2 *supra*) have absolutely no relation to the interstate fares. As to the third ground, the District Court itself makes clear that the question was whether the evidence before the Interstate Commission supports its findings that the *intrastate* fares which it has prescribed will be just and reasonable for the future (Dist. Ct. Opinion, Jurisdictional Statement, p. 21). Hence, there is no basis in the District Court's opinion for its interference with the Interstate Commission's plenary power to fix interstate fares.

CONCLUSION.

Appellant's Jurisdictional Statement has set forth the substantial questions involved in this appeal, which affect the determination of rights of carriers, their passengers, and also their shippers who are saddled with passenger deficits, throughout the country. The decision of the District Court would condone the device employed by the Illinois Commission of wilful procrastination for more than two years in disposing of a carrier's petition for relief, and then objecting to the grant of relief under federal law because the evidence before the Interstate Commission, reflecting changes occurring during the carrier's long wait, varies from that presented to the State Commission. Even were a State Commission conscientiously inclined to dispose of a petition for relief within a reasonable time, both the decisions of this Court, and of another panel of judges for the same district as the District Court herein, have declared that Section 13(4) of the Interstate Commerce Act does not tolerate the delay incident to a prior determination of entirely different issues under state law.

Appellant has further shown in its Jurisdictional Statement the potential confusion and disruption of the nation's rate structure if comparability of operating conditions is to become a prerequisite for uniform fare levels among carriers. Appellant has also shown that the District Court has failed in its duty to determine if there was any evidence acceptable to reasonable minds upon which the Interstate Commission could base its orders, by patently ignoring a substantial part of the evidence before the Interstate Commission. Finally, the District

Court has improperly enjoined orders of the Interstate Commission for the absence of a finding which this Court has refused to require.

The questions submitted to this Court are substantial. Appellant requests that the motions of Appellees to affirm be denied and that this court note probable jurisdiction.

Respectfully submitted,

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OCTOBER TERM, 1957

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On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF FOR APPELLANT.

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APPENDIX

The Pertinent Provisions of the Interstate Commerce Act (United States Code, Title 49).

Section 13(3) 1a

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 12
Consolidated with Nos. 27 and 28

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF FOR APPELLANT.

OPINION BELOW.

The report of the Interstate Commerce Commission (R. 28-40) appears at 297 I.C.C. 353. The opinion of the District Court (R. 460-470) is reported at 146 F. Supp. 195.

JURISDICTION.

The final judgment of the District Court was entered June 14, 1956 (R. 470-471). Notice of Appeal was filed by appellant in the District Court June 15, 1956 (R. 472-

474). On August 10, 1956 appellant docketed the case and filed the record thereof and its Jurisdictional Statement with this Court. Order noting probable jurisdiction and consolidating this proceeding with Nos. 27 and 28 was entered December 10, 1956 (R. 486).

The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101 (b).

STATUTES INVOLVED.

This appeal involves Section 13 (3) and (4) of the Interstate Commerce Act, as amended, 41 Stat. 484, 49 U.S.C. 13 (3) and (4), set forth in the Appendix, *infra*, pp. 1a-2a.

QUESTIONS PRESENTED.

1. Whether a state regulatory body must first sit in judgment on the lawfulness of a railroad's intrastate fares before the Interstate Commerce Commission can exercise its powers under Section 13 (3) and (4) of the Interstate Commerce Act to remove discrimination by such fares against interstate commerce.

2. Whether Interstate Commerce Commission orders increasing a railroad's intrastate fares and interstate fares, respectively, should be set aside for the want of (a) a specific finding of what contribution from intrastate traffic would constitute a fair proportion of the railroad's income; or (b) an alternative finding that the revenue produced by the increased intrastate fares prescribed by the Commission will constitute not more than a fair proportion of appellant's total income, the Commission having found that such fares:

"* * * are necessary so that the travel thereunder may make a fair contribution toward respondent's[1] indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service."

3. Whether there was substantial evidence to support the Commission' findings of undue, unjust, or unreasonable discrimination against interstate commerce, and that the increased fares ordered by the Commission are just and reasonable.

STATEMENT.

The Historical Background.

Appellant is an interstate railroad operating within and between the states of Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Washington, and Wisconsin. Included in its service to the public is the transportation of passengers in the Chicago suburban area over lines between Chicago and Elgin, Illinois, to the west, and between Chicago and Walworth, Wisconsin, to the north (R. 99).

In July, 1952, faced with an annual out-of-pocket loss[2] of over $1,000,000 a year from its suburban passenger operations in the Chicago area, appellant petitioned the Illinois Commerce Commission for leave to discontinue non-rush hour trains, and to increase its intrastate suburban fares in Illinois sufficiently to eliminate its out-of-pocket loss (R. 77). Two years and four months later,

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[1] Appellant herein.

[2] "Out-of-pocket loss" refers to the deficit remaining after deducting suburban passenger revenues from out-of-pocket expenses incurred in performing the suburban service. "Out-of-pocket expenses" are those expenses which, over a period of time, would be avoided if the service were not performed.

on November 10, 1954, the Illinois Commerce Commission denied any relief whatever to appellant either as to train discontinuance or fare increase (R. 77-92).

It denied a fare increase on the theory that appellant, having dieselized its service since the close of the hearings before the Illinois Commerce Commission, no longer suffered an out-of-pocket loss, but instead enjoyed a net railway operating income of $224,000 annually from its suburban operation (R. 86). The Illinois Commerce Commission, however, overestimated appellant's savings from dieselization by $452,996 a year, relying on the estimates of a New York transportation engineer[3] based on utilization of 1500 HP diesels (R. 81). With the exception of one locomotive handling one light train a day in each direction, 1500 HP diesels proved inadequate, the suburban operation requiring, in addition, five 1750 HP and twelve 2000 HP diesels (R. 165-166, 169).

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[3] His estimate of various expenses for a six-month period (R. 82) is compared to actual expenses during the four-month period following dieselization (R. 385-387), increased 50% to reflect a six-month operation:

	Estimated	Actual	Difference
Locomotive Repairs	$ 52,600	$ 91,280	$ 38,680
Car Repairs	134,000	120,175	(13,825)
Trainmen	221,800	232,078	10,278
Engine Crew	132,000	178,846	46,846
Fuel	75,000	116,394	41,394
Enginehouse	35,000	58,105	23,105
Train Supplies and Expenses	42,000	95,800	53,800
Water, Lubrication and Supplies	10,500	8,617	(1,883)
Miscellaneous	5,200	7,641	2,441
Payroll Taxes	44,200	37,282	(6,918)
Interest on Investment at 3%	45,000	——	(45,000)
Depreciation of Locomotives	——	77,580	77,580
	$797,300	$1,023,798	$226,498

The State Commission also rejected, as part of the expense of the suburban operation, nearly $290,000 of the annual rental paid for the use of Chicago Union Station of which appellant would be relieved if the suburban service were discontinued (R. 83-85).

The Interstate Commerce Commission Proceeding.

Within three months after the Illinois Commerce Commission's refusal to grant relief, appellant sought (1) an investigation by the Interstate Commerce Commission into the lawfulness of its Illinois intrastate suburban fares, and (2) permission to increase its interstate suburban fares (R. 24-27). The Interstate Commerce Commission by order entered March 4, 1955, instituted an investigation under the provisions of Section 13 (3) and (4) of the Interstate Commerce Act, 40 U.S.C., Section 13 (3) and (4), (App. A. *infra*, pp. 1a-2a) to determine:

(1) Whether appellant's intrastate fares in the Chicago suburban area made or imposed by authority of the State of Illinois cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce;

(2) What fares should be prescribed to remove any unlawfulness found to exist; and

(3) Whether certain outstanding orders of the Commission should be modified to permit increased interstate and intrastate fares (R. 28-29).

After several days of hearings before an examiner (R. 95-372) at which numerous exhibits were introduced (R.

373-436), a proposed report was issued to which exceptions were filed by appellees, and appellant replied (R. 28-40).

On November 21, 1955 the Commission issued its report containing findings:

1. "That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.[4]
2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 (4) of the Interstate Commerce Act.
3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.
4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

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[4] This finding is supported by a subsidiary finding that for the year 1954, the total revenues from the passenger-carrying portion of the suburban service were $1,799,140, the out-of-pocket cost, not including nonpayroll taxes or return, was $2,269,404, and the credit for nonrevenue passengers $164,226, resulting in a total out-of-pocket deficit of $306,038 (R. 34).

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future." (R. 36-37).

On the same date the Commission issued an order authorizing appellant to increase its interstate suburban fares between Wisconsin and Illinois points to the prescribed basis (R. 41-42) and such fares became effective January 29, 1956.

The Commission, however, withheld an order increasing appellant's Illinois intrastate fares to afford the Illinois Commerce Commission an opportunity to authorize the increase (R. 37). Upon failure of the Illinois Commerce Commission to act (R. 10), the Interstate Commerce Commission by its order of March 2, 1956, directed appellant to increase such fares to the prescribed basis, effective April 20, 1956 (R. 75-77).

The Opinion and Orders of the District Court.

Suit was brought on April 13, 1956 by the State of Illinois and Illinois Commerce Commission (hereinafter sometimes called the "State Commission"), and the Milwaukee Road Commuters Association (hereinafter sometimes called "protestant"), appellees herein, to set aside the Interstate Commerce Commission's report and order of November 21, 1955, and its order of March 2, 1956 (R. 2-23). Appellees' complaint was predicated on: (1) alleged lack of authority or jurisdiction of the Interstate Commerce Commission to increase appellant's intrastate suburban fares; and (2) alleged lack of evidence on which to base findings that appellant's intrastate suburban fares caused unjust discrimination against interstate commerce and that the intrastate fares prescribed by the Interstate Commerce Commission are fair and reasonable (R. 21). By

amendment filed June 4, 1956, appellees also alleged that the findings in the report and order of November 21, 1955 were inadequate to support or justify the Interstate Commerce Commission's exercise of authority to prescribe intrastate fares (R. 458-460).

Appellees' motion for a temporary restraining order against enforcement of and compliance with the Interstate Commerce Commission's order was heard on April 18, 1956. In opposition thereto appellant presented an affidavit of its Assistant General Passenger Agent showing that the fares prescribed are on the same level as fares authorized by the Illinois Commerce Commission and currently in effect in the Chicago suburban area on the Chicago and North Western Railway which serves territory adajcent to that of appellant, and on the Chicago, Rock Island and Pacific Railroad (R. 437-439). The District Court, by order entered April 18, 1956, denied the motion for the temporary restraining order upon condition that appellant impound the excess fares collected from and after April 20, 1956, the effective date of the order increasing the intrastate fares (R. 76, 440-441).

On June 14, 1956 the District Court issued its opinion finding the Interstate Commerce Commission's orders invalid for:

(1) Lack of authority or justification for increasing appellant's fares until the Illinois Commerce Commission has been given a chance to fix the fares on the same evidence and same basis (R. 469-470);

(2) Want of a finding as to what contribution from the intrastate suburban traffic would constitute a fair proportion of appellant's total income, or an alternative finding that the revenue produced by

the prescribed intrastate fares will constitute not more than a fair proportion of appellant's total income (R. 463-467); and,

(3) Lack of sufficient evidence to support the finding that the prescribed fares are just and reasonable (R. 467-469).

Judgment was entered on the same date declaring the report and orders of the Interstate Commerce Commission to be beyond its power and an abuse of its authority, and unsupported by the findings and evidence. The subject matter was remanded to the Interstate Commerce Commission for further proceedings not inconsistent with the Court's opinion. The Interstate Commerce Commission was permanently enjoined from enforcing its report and orders, and the appellant from continuing to give effect to the fares prescribed. Appellant was further directed to refund all monies received as excess fares under the District Court's order of April 18, 1956 (R. 470-471).

An order staying the injunction was entered June 18, 1956, upon condition that appellant continue to impound the excess fares collected after April 20, 1956, and refund them in the event the judgment of the District Court were affirmed or the appeal dismissed or discontinued (R. 474-476).

Motion t amend or correct the judgment and opinion of the District Court was filed July 20, 1956 by the United States of America and the Interstate Commerce Commission to exclude therefrom reference to the Commission's order of November 21, 1955 fixing interstate fares, and to exclude any statement that would make it a condition precedent to action by the Interstate Commerce Commission under 49 U.S.C. 13 (4) for appellant first to

present the same evidence to the Illinois Commerce Commission as presented to the Interstate Commerce Commission (R. 479-481). The motion was denied (R. 482).

Notices of appeal were filed on June 15, 1956 by appellant (R. 472-474) and on August 13, 1956 by the United States of America and the Interstate Commerce Commission (R. 483-485).

SUMMARY OF ARGUMENT.

I. Power of Interstate Commerce Commission to Remove Discrimination Against Interstate Commerce.

The power of the Interstate Commerce Commission under Section 13 (3) and (4) of the Interstate Commerce Act to remove discrimination against interstate commerce by increasing intrastate fares can not be defeated by an alleged lack of opportunity for the State Commission to adjust such fares on the same basis and evidence as submitted to the Interstate Commerce Commission. Items of expense not included in the earlier proceeding before the State Commission were then either nonexistent or of such relatively minor consequence that their submission to the State Commission could not have changed its refusal to recognize appellant's out-of-pocket deficit. Likewise, their exclusion from the out-of-pocket deficit found by the Interstate Commerce Commission would have left a substantial loss on which to base the Commission's finding that the revenue failed to cover the out-of-pocket expense of the service.

The State Commission, in fact, had an opportunity to fix appellant's fares on the same evidence and basis submitted to the Interstate Commerce Commission. The State Commission was an active participant in the Interstate

Commerce Commission's proceeding and had possession of all the evidence upon which the Interstate Commerce Commission acted, and had more than ample time in which to reopen its own proceeding and approve the same increases as prescribed by the Interstate Commerce Commission. The State Commission not only declined to do so, but attacked the sufficiency of the evidence to support such an increase. Its actions, as well as its failures to act, leave not the slightest reason to believe that it would grant the same increase on such evidence, or any increase whatever.

Finally, the federal law does not tolerate the delay in removing discrimination against interstate commerce incident to a prior adjudication of entirely different issues under state law.

II. Findings Adequate to Support Orders.

The District Court would strike down the Commission's orders fixing appellant's suburban fares for lack of a finding as to what contribution from its intrastate suburban traffic would constitute a fair proportion of the total income. In the case cited by the Court, *North Carolina* v. *United States*, 325 U.S. 507, such a finding, if made, would have been accepted as a substitute for a finding that the intrastate fares were not compensatory or failed to meet the full cost of service. In the present case the Commission found not merely that the intrastate fares were insufficient to cover the full cost of the service but the out-of-pocket expenses alone.

Further, the alternate finding that the District Court indicated would be satisfactory, *i.e.* that the revenue produced by the prescribed fares would constitute not more than a fair proportion of appellant's total income, is sub-

stantially the same as the Commission's finding that such fares "are necessary so that travel thereunder may make a fair contribution toward [appellant's] indirect costs and return on investment . . ." All other necessary findings were made by the Commission.

III. Evidence Sufficient to Support Findings.

The District Court held the evidence insufficient only as to the finding that the prescribed fares will be just and reasonable. It erroneously believed that such fares will cover not only all the cost of the suburban service, but other costs as well. The additional revenue, in fact, defrays only a fraction of the deficit based on the full cost of the service.

The Commission's finding of just and reasonable fares for appellant based on the Chicago and North Western fare level operated as a hold-down rather than as a justification of the increase. Much additional evidence on which a finding of a higher just and reasonable fare level might have been made was considered by the Commission.

Although the District Court challenged no other finding as without sufficient support, appellees attacked the sufficiency of the evidence to support the finding that the existing fares failed to meet the out-of-pocket costs and caused an undue, unjust, and unreasonable discrimination against interstate commerce. These findings, in turn, were based on another finding in dollars of the revenues and expenses attributable to the suburban service, from which the Commission excluded substantial out-of-pocket expenses. There can be no basis, therefore, for any attack on the findings as lacking support in the evidence.

IV. Effect of the Interstate Commerce Commission's Orders.

The Commission's orders will not discriminate against intrastate commerce. Like increases in the interstate suburban fares were made three months before the increased intrastate fares became effective. The Commission is actively investigating the interstate through passenger service deficit and has already granted increases in interstate through passenger fares.

If the Commission's orders are set aside, appellant would be compelled to refund an amount now approximating $500,000, not from non-existent profits of the suburban service, but from its system earnings which produce only a marginal rate of return. These orders merely require the suburban passenger to pay the same or lower fares than in effect on various other railroads in the Chicago area, and impose a reasonable condition on the use by a state of an interstate system for intrastate commerce.

ARGUMENT.

I. The Power of the Interstate Commerce Commission Under Section 13 (3) and (4) of the Interstate Commerce Act to Remove Discrimination Against Interstate Commerce by Increasing Intrastate Fares is not Dependent Upon Prior Adjudication of Their Lawfulness Under State Law by a State Commission.

The District Court characterized appellant as deliberately removing from the consideration of the State Commission in the 1952 state proceeding certain items claimed as out-of-pocket expense in 1954 before the Interstate Commerce Commission, *i.e.*, depreciation of locomotives and coaches, and certain maintenance of way expense (R. 461, 469). The District Court then concluded: "If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis." (R. 496).

A. Reasons for and Effect of Elimination of Certain Expenses before State Commission.

The items, totaling $258,172 (R. 16), were included in the 1954 Interstate Commerce Commission proceeding as out-of-pocket expenses in accordance with the formula for comparison of railroad revenues and expenses for suburban and commutation services developed by the Cost Section of the Interstate Commerce Commission's Bureau of Transport Economics and Statistics (R. 133, 359).

The implication, however, that appellant practiced deceit by withholding them from the State Commission in 1952 is ill-founded. Of the $258,172 in question, $155,160

represents annual depreciation of modern diesel locomotives, computed on a 20-year service life, which were assigned to the suburban service in 1954, *two years after appellant had presented its evidence to the State Commission* (R. 130; Ex. 13-B, Sh. 2, line 49(b), R. 351, 386). The locomotives in operation in 1952 ranged in age from 22 to 42 years (R. 78). The major difference in the expense figures is thus accounted for by changes in physical operations during appellant's long wait of two years and four months for the State Commission's decision[5] which denied all relief and necessitated action by the Interstate Commerce Commission.

Concerning the omission of the remaining of $103,012, appellant's comptroller testified that at the time of the 1952 State Commission proceeding, the out-of-pocket expenses of the suburban operation were so far in excess of the existing revenues, plus any revenue increase which might be expected, that only *immediately* relievable expenses were included (R. 242, 358-359). The wide spread between the out-of-pocket expenses and revenues at that time is confirmed by protestant's own exhibit which concedes an out-of-pocket deficit in 1952 of $863,925 (Ex. 34, R. 345, 428). The State Commission nevertheless concluded on the basis of faulty estimates (p. 4, *supra*) that, having since dieselized, appellant suffered no out-of-pocket loss, but instead enjoyed a net railway operating income from its suburban operation of approximately $224,000 annually. An additional expense of $103,012 could not have altered its refusal to recognize any out-of-pocket loss. Conversely, a deduction of $103,012 from the out-of-pocket deficit of

[5] For lesser delays, the State Commission has been repeatedly admonished by federal and state courts. (See **Smith v. Illinois Bell Telephone Co.**, 270 U.S. 587; **Chicago B. & Q. R. Co. v. Illinois Commerce Commission, et al.**, 82 Fed. Supp. 368, 375; **Pullman Co. v. Illinois Commerce Commission**, 390 Ill. 40, 60 N.E. 2nd 232).

$306,038, as found by the Interstate Commerce Commission, (R. 34) would still have left an out-of-pocket deficit of $203,026 to substantiate the Interstate Commerce Commission's finding that the fares failed to meet the out-of-pocket expense.

B. Availability of Opportunity for State Commission to Fix Fares on Same Evidence and Basis as the Interstate Commerce Commission.

The District Court's assumption that the State Commission was not afforded the same opportunity as the Interstate Commerce Commission to fix appellant's intrastate fares on the same evidence and same basis is contrary to fact. In its order of November 10, 1954, refusing appellant an increase in its suburban fares, the State Commission expressly retained jurisdiction of the parties and subject matter for the purpose of entering such further orders as it might consider proper (R. 92). The State Commission entered its appearance (R. 28) and actively participated in the proceeding before the Interstate Commerce Commission, cross-examining appellant's witnesses (R. 168-170, 173-180, 234-241), and offering new evidence by its own transportation analyst (R. 345-348).

The State Commission, therefore, had in its possession all the evidence as presented to the Interstate Commerce Commission. After the hearing closed on May 23, 1955 (R. 372), the State Commission had ample opportunity prior to the issuance of the Interstate Commerce Commission's report on November 21, 1955 to reopen its own proceeding and fix appellant's fares in accordance with such evidence. The Interstate Commerce Commission even then withheld an order fixing appellant's intrastate fares to give the State Commission a further opportunity to act (R. 37). Instead,

the State Commission in a petition for reconsideration attacked the sufficiency of the evidence to warrant the fare increase found necessary by the Interstate Commerce Commission (R. 68-75). It was only after the State Commission declined the opportunity to fix the fares on the same evidence and basis that the Interstate Commerce Commission finally ordered the intrastate fares increased effective April 20, 1956. (R. 75-77)

C. Necessity of Opportunity for the State Commission to Fix Fares on the Same Evidence and Basis as the Interstate Commerce Commission.

Section 13(3) and (4) of the Interstate Commerce Act deals only with the removal of discrimination against interstate commerce by fares, rates, charges, etc. made or imposed by authority of a state. It is not necessary that such fares be prescribed by the state or result from any affirmative action on its part. It is sufficient that they are maintained in intrastate commerce subject to the authority of the state and published as required by its laws. *Florida* v. *United States*, 282 U.S. 194, 209. Hence, it is not the action of the State Commission with which the Interstate Commerce Commission deals, but the fares themselves and the adequacy of their contribution to the cost of running an interstate railroad.

Had Congress intended that the Interstate Commerce Commission forego the performance of its duties under Section 13(4) of removing undue, unreasonable, or unjust discrimination against interstate commerce until a decision has been rendered by the State Commission on the lawfulness of the fares under state law, it could easily have so provided. It did not do so; therefore,

> "To hold, as some of the appellants urge, that there can be no adjustment of intrastate rates by the Interstate Commerce Commission so far as may be needed

to protect interstate commerce until the state itself has first 'sat in judgment on the issue of the lawfulness of those intrastate rates' would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority.". (*Florida* v. *United States*, 282 U.S. 194, 210).

II. The Interstate Commerce Commission's Orders Are not Invalid for Lack of Adequate Findings.

The District Court repeatedly refers to the lack of a finding of what contribution from the intrastate suburban traffic would constitute a fair share of appellant's total income (R. 463-467) and concludes that without such a finding the order can not stand (R. 465).

Appellant has been unable to find, in a survey of cases before this Court, any holding that such a finding is essential to the validity of a Commission order under Section 13(4). The survey included, among others, the following cases:

1. *Railroad Commission of Wisconsin* v. *Chicago B. & Q. R. Co.*, (1922) 257 U.S. 563, upholding an order of the Commission increasing intrastate passenger fares in Wisconsin, 59 I.C.C. 391.

2. *State of New York* v. *United States*, (1922) 257 U.S. 591, upholding order increasing intrastate passenger fares in the State of New York, 59 I.C.C. 290.

3. *Florida* v. *United States*, (1930) 282 U.S. 194, setting aside order increasing intrastate rates on logs in Florida, 146 I.C.C. 717.

4. *Georgia Public Service Commission* v. *United States*, (1930) 283 U.S. 765, upholding order increasing intrastate rates on chert, sand, and gravel in Georgia, 160 I.C.C. 309.

5. *Louisiana Public Service Commission* v. *T. & N. O. R. Co.*, (1931) 284 U.S. 125, upholding order increasing intrastate rates on sand, gravel, and other commodities in Louisiana, 155 I.C.C. 247, 157 I.C.C. 498.

6. *United States* v. *Louisiana*, (1933) 290 U.S. 70, upholding order increasing intrastate rates on various commodities in Louisiana, 186 I.C.C. 615.

7. *Florida* v. *United States*, (1933) 292 U.S. 1, upholding order increasing intrastate rates on logs in Florida, 186 I.C.C. 157, 190 I.C.C. 588.

8. *North Carolina* v. *United States*, (1945) 325 U.S. 507, and *Alabama* v. *United States*, (1945) 325 U.S. 535, setting aside order increasing intrastate passenger fares in North Carolina, Alabama, Tennessee, and Kentucky, 258 I.C.C. 133. See discussion following.

9. *King* v. *United States*, (1952) 344 U.S. 254, upholding order increasing intrastate freight rates on commodities generally in Florida, 278 I.C.C. 41.

In Nos. 4, 6, 7 and 9 the Commission's findings were challenged as inadequate but, although they included no finding as to what amount the intrastate traffic should contribute to the total income, were approved by this Court.

The District Court relies upon *North Carolina* v. *United States*, *supra*; 325 U.S. 507, as its authority for striking down the Commission's order for want of such finding (R. 464). In that case, however, the evidence indicated that the North Carolina intrastate passenger fares which the Interstate Commerce Commission had ordered increased were already producing a profit. This Court, in the light of such evidence, observed that:

> "Neither in its formal findings nor in its discussion of the facts did the Commission indicate that the North

> Carolina railroad rates here involved were less than compensatory or insufficient to cover the full cost of service." p. 515.

Solely for this reason did a finding become necessary as to what amount the intrastate traffic should contribute as its fair share of the total income, by which the ultimate conclusion that the existing fares discriminated against interstate commerce could be confirmed. In the present case the Commission found not merely that the existing suburban fares were insufficient to meet the *full* cost of service, but found them insufficient to cover even the out-of-pocket expense thereof (R. 36).

The District Court indicates a willingness to accept an alternative finding that the prescribed fares will contribute not more than a fair proportion of the total income (R. 464). If such a finding could cure a defect which appellant has shown is purely imaginary, it has, in effect, been made, the Commission finding:

> "That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service." (R. 37).

The District Court refuses to accept this finding on the ground that a fair proportion of total income is not the same as a contribution toward indirect costs and return on investment (R. 465). Appellant, however, pays the indirect costs of each service and obtains a return, if any,

from its income. A fair contribution to a part cannot exceed a fair proportion of the whole.

As recognized by this court in *Florida* v. *United States*, 282 U.S. 194, 214, however, it is not enough that the Commission merely find the existing intrastate fares on particular traffic not remunerative or reasonably compensatory, because the raising of fares does not necessarily increase revenue. A finding that additional revenue will result from the prescribed fares is essential, and was made (R. 34, 37). Likewise, the further finding required in the *North Carolina Case* that the prescribed fares will not exceed a just and reasonable level was specifically made (R. 37). Accordingly, the Commission's order is firmly based on adequate findings.

III. The Findings of the Commission Find Ample Support in the Evidence.

The remaining ground on which the District Court would hold the Interstate Commerce Commission's order invalid is the alleged lack of evidence to support its finding that the prescribed fares are just and reasonable (R. 469). The Court, however, was under a misapprehension that such fares would pay, not only all of the costs of the suburban service but other costs of the railroad as well, and thus might well be contributing more than a fair proportion of the total income (R. 465).

"All the costs" or "full cost" of the suburban service includes not only the out-of-pocket expenses, of which appellant would over a period of time be relieved if the suburban service were discontinued, but fully distributed expenses as well. The latter expenses include out-of-pocket expenses plus a fair allocation of constant expense incurred jointly with other traffic (R. 134). The propriety,

in fact the necessity, of taking into account the fully distributed expenses was firmly established by this Court in *Northern Pacific R. Co.* v. *North Dakota*, 236 U. S. 585, 596:

> "We say this, for we entertain no doubt that, in determining the cost of the transportation of a particular commodity, all the outlays which pertain to it must be considered. We find no basis for distinguishing in this respect between so-called 'out-of-pocket costs,' or 'actual' expenses, and other outlays which are none the less actually made because they are applicable to all traffic, instead of being exclusively incurred in the traffic in question. Illustrations are found in outlays for maintenance of way and structures, general expenses and taxes. It is not a sufficient reason for excluding such, or other, expenses to say that they would still have been incurred had the particular commodity not been transported. That commodity has been transported; the common carrier is under a duty to carry, and the expenses of its business at a particular time are attributable to what it does carry."

Appellant's evidence shows a deficit on a fully distributed expense basis, without any allowance for a return on investment, of over 1.8 million dollars a year (Exs. 13-A and 15, R. 351, 382, 388). Protestant's Exhibit 34 (R. 351, 428) shows a corresponding deficit of over 1.4 million dollars. The additional $383,000 to be derived from the prescribed fares (R. 34) will, therefore, pay but a small part of the full deficit of the suburban service, leaving no possibility that it will pay the expenses of any other service. On the contrary, there remains a deficit of well over a million dollars a year, even with the reductions claimed by appellees, which must be borne by the freight operations of appellant. Representatives of interstate shippers of coal, paper, pulp, and canned goods over appellant's lines testified before the Interstate Commerce

Commission in support of increases in fares in order that their traffic might bear no more of the cost of the suburban traffic than necessary (R. 111-127).

The Interstate Commerce Commission might well have ordered an increase in appellant's intrastate fares producing four or five times more than the $383,000 additional revenue from the prescribed increases without increasing the fares more than necessary to remove discrimination against interstate commerce. Section 13 (4), however, confers no authority to raise intrastate fares above a reasonable level. *United States* v. *Louisiana*, 290 U.S. 70, 78. Hence, the determination by the Commission of a just and reasonable fare level served not to justify the increase but rather to limit it, permitting a recovery of only a part of the full cost of the service.

Solely at the request of the examiner, appellant offered evidence of the Chicago and North Western suburban fare level which yields an increase in revenue to appellant of only 21 per cent (Exs. 18, 19, R. 181, 393-394). In doing so appellant's counsel stated as quoted by the court: "We do not offer these North Western fares as a criteria (*sic*) as to what our fares should be." (R. 467, 468). Throughout the proceeding appellant contended that a just and reasonable fare level would yield not less than 29.4 per cent additional revenue (R. 26, 152).

As proof that the suburban traffic could bear such increased fares, appellant showed that they would be lower than fares already in effect on the Illinois Central, and Chicago South Shore and South Bend, in the Chicago suburban area. (Ex. 35, R. 354, 432-436). Appellant also offered evidence of higher fares received for slower service by other carriers serving the same territory as appellant (R. 155-159). The protestant, in turn, offered evi-

dence of lower fares on the Chicago, Burlington & Quincy and Chicago, Rock Island and Pacific railroads.[6] The Commission, however, deemed the level of the Chicago and North Western fares as more persuasive than those tendered for comparison by either appellant or appellees, particularly in view of the similarity of the territory served by the two lines and of their previous fares. (R. 35)

Dissimilarity between 1951 operating conditions of the Chicago and North Western and those of appellant in 1954, mentioned by the District Court (R. 468), in no way impairs the use of the Chicago and North Western's fares to determine what the Chicago suburban traffic can bear toward paying the cost of the service. Should the numerous fare comparisons submitted to the Commission be inadequate to determine a just and reasonable level for appellant's fares, the Commission also had before it sufficient evidence of the out-of-pocket and fully distributed costs of appellant's service (R. 129-147); increases in earnings of industrial employees more than double the increase in suburban fares since 1940 (Ex. 15, R. 351, 392); the amount of service provided (Exs. 4 and 5, R. 351, 375-378) the equipment, trackage, maintenance and repair facilities, heated and lighted passenger stations, and train crews and other personnel required (R. 99-110). The record is thus replete with evidence, apparently overlooked by the District Court, that supports the finding that the prescribed fares are just and reasonable.

There is no challenge by the District Court of the sufficiency of the evidence to support any other finding, but appellees in their complaint attack the sufficiency of the

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[6] As shown in the affidavit introduced in the court proceeding, the fares of the latter line have been approved by the Illinois Commerce Commission on the same basis as those prescribed by the Interstate Commerce Commission for appellant (R. 437-439).

evidence to support the findings that the previous fares resulted in an out-of-pocket deficit and caused discrimination against interstate commerce (R. 14-19).

Although the Commission conceded that appellant would be relieved of $305,530 a year of Chicago Union Station expense if its suburban service were discontinued (the accepted test of an out-of-pocket expense), it disallowed $233,642 thereof. It believed that it was following a formula used by appellant in numerous prior proceedings (R. 33, 34), but, as testified by appellant's comptroller, with such items as taxes and interest eliminated therefrom, the formula was no longer recognizable, even by its author (R. 356). Appellant offered to show that $305,530 was a fair rental for the use of the Chicago Union Station by its suburban operation, but such evidence was excluded on objection (R. 257, 258).

The Commission also reduced appellant's out-of-pocket expenses by a credit of $164,226 for nonrevenue passengers despite that only $17,928 would be saved if they were not hauled (R. 361).

Thus the Commission cut sharply appellant's out-of-pocket deficit by disallowing approximately $380,000 of actual out-of-pocket expenses. Its finding of a remaining out-of-pocket deficit of $360,038 and a resulting discrimination against interstate commerce, as well as its other findings, certainly do not go beyond the evidence.

IV. The Effect of the Commission's Orders is to Impose a Reasonable Requirement on the Use by a State of an Interstate Railroad System for Intrastate Commerce.

It may be argued by appellees that the effect of the Interstate Commerce Commission's orders is to discrim-

inate against intrastate traffic by increasing suburban fares in the face of a greater through passenger service deficit of appellant. But the Commission also ordered the interstate suburban fares increased almost three months before ordering a like increase in the intrastate suburban fares (R. 41-42, 75-77). Commutation fares for the longer hauls in suburban territory will remain at a lower rate per mile than any through passenger fare (R. 36).

Congress, in enacting Section 13(3) and (4) sought to make the interstate railroads adequate to the needs of the country by securing for them a reasonably compensatory return for all the work done. *Railroad Commission of Wisconsin* v. *Chicago B. & Q. R. Co.*, 257 U. S. 563, 589. As stated by the Commission, the fact that appellant "can not make a profit or at least so far has been unable to make a profit on its other passenger-train service is no reason for depriving it of an opportunity to make a profit on its suburban operations if it can be done at lawful fares." (R. 36).

Nor has the Commission overlooked the through passenger service with its special problems arising from air and private automobile competition. In addition to granting increases in interstate fares for such service, it has on its own motion instituted an investigation into the deficit from passenger-train and allied services by railroads subject to its jurisdiction, prompted by the serious concern which the passenger-service deficit causes not only the railroads, but the Commission and State Commissions, shippers, and the public generally.[7]

If the District Court's judgment setting aside the Commission's orders is allowed to stand, appellant will be

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[7] 70th Annual Report of the Interstate Commerce Commission (November 1, 1956) pp. 50, 53.

required to refund the increases collected, which at the date hereof approximate $500,000. Such refund would be made, not from any profits from the suburban operation, which, even with the increased fares, results in a substantial deficit, but from the other earnings of an interstate system producing a bare return on investment of from 1.89 per cent to 2.27 per cent.*

This case illustrates the very evil that Congress sought to abolish: namely, the draining away of already inadequate earnings from an interstate transportation system by a state's use thereof for intrastate traffic. As so aptly stated in *Railroad Commission of Wisconsin* v. *Chicago B. & Q. R. Co.*, 257 U.S. 563, 589, 590:

> "The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress, as the dominant controller of interstate commerce, may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson* v. *Shaw*, 204 U. S. 24; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525; *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

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* Source: Annual Reports of appellant to the Interstate Commerce Commission 1952, 1953, and 1954, stipulated into the record by counsel. (R. 315).

The orders of the Commission herein do not eliminate the full cost of service deficit of the suburban operation, let alone producing compensation reasonably proportionate to the small return from the system operations.

From the standpoint of the suburban passenger, the upholding of the Commission's orders will merely require him to pay (1) the same fares as approved by the State Commission three years earlier for the Chicago and North Western, which serves suburban areas immediately adjoining those served by appellant; (2) the same fares as now in effect on the Chicago, Rock Island and Pacific Railroad with the State Commission's approval; and (3) substantially less than suburban fares on the Chicago South Shore and South Bend and the Illinois Central railroads.

The Commission, therefore, has imposed a very modest and reasonable condition on the use by a state of an interstate transportation system for intrastate commerce. Its orders should be upheld.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment of the District Court should be reversed and the orders of the Interstate Commerce Commission reinstated.

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August 23, 1957

APPENDIX.

The Pertinent Provisions of the Interstate Commerce Act (United States Code, Title 49), Involved in this Case are as follows:

Section 13(3)—

"Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III."

Section 13(4)—

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 12

Consolidated with Nos. 27 and 28

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

REPLY BRIEF FOR APPELLANT.

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REPLY BRIEF FOR APPELLANT.

I. APPELLEES' STATEMENTS OF FACTS.

Several inaccuracies appear in the statements of facts in the briefs of the Milwaukee Road Commuters' Association (hereinafter called the "Association"), and the State of Illinois and Illinois Commerce Commission (hereinafter collectively called the "State"). Some are repeated in their arguments and will be dealt with later in this reply brief.

The Association, as it did before the Interstate Commerce Commission and the District Court, accuses appellant of representing to the Illinois Commerce Commission that depreciation and maintenance of way expenses should not be considered as out-of-pocket expenses (pp. 15, 52).[1] At no time did appellant state or imply that the expenses in question were not out-of-pocket expenses (R. 359).

It is asserted by the Association, without support of the record, that appellant dieselized its suburban service as a result of the evidence in the State Commission proceeding (pp. 20, 41). Any assumption that appellant relied on the erroneous estimates of a transportation engineer 1000 miles distant from its operations rather than on its own extensive experience with dieselization, is in error.

The State suggests that there is no showing that the four months used in computing actual expenses of the diesel operation are average months (p. 3). It was agreed by the parties before the Interstate Commerce Commission that the four months in question could and should be used in computing the expenses affected by dieselization (R. 194, 195). The State's suggestion that certain diesel locomotives employed in the suburban service were "retired" from main line service is inaccurate (pp. 3, 4). These units, only seven and eight years old, were simply transferred from the through passenger to the suburban service.

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[1] Page numbers, unless otherwise indicated, refer to the brief of appellees to which reply is directed.

II. DISCRIMINATION AGAINST INTERSTATE COMMERCE.

Appellant is in full accord with the Association (p. 33) and the State (p. 11) that there must be a showing and a finding by the Interstate Commerce Commission of undue, unreasonable, or unjust discrimination by the intrastate suburban fares against interstate commerce. The Interstate Commerce Act is silent, however, as to what constitutes such discrimination. This was left to the expert judgment of the Interstate Commerce Commission to be determined from the facts of each case.

> "The purpose for which the Commission was created was to bring into existence a body which, from its special character, would be best fitted to determine, among other things, whether upon the facts in a given case there is an unjust discrimination against interstate commerce. *United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320. That purpose unquestionably extended to the prohibited discrimination produced by intrastate rates." *Florida* v. *United States*, 292 U. S. 1, 12.

The Commission, in the exercise of its expert judgment, found that appellant's intrastate suburban fares caused, and unless increased to the extent prescribed would continue to cause, undue, unreasonable, and unjust discrimination against interstate commerce (R. 36).

Some attempt is made by the Association to escape the application of Section 15(a) to the present proceeding (pp. 30-32). Section 15(a), of course, confers no power to fix any kind of rate, but requires the Commission in the exercise of its powers under other sections, such as Section 13(4), to give due consideration, among other things,

> "... to the need in the public interest, of adequate and efficient railway transportation service at the lowest

> cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

This is confirmed by the reference to the "dovetail relation" between Sections 13(4) and 15(a) in *Railroad Commission of Wisconsin* v. *Chicago, B. and Q. R. Co.*, 257 U. S. 563, 586.

A. Disparity of Intrastate Fares.

The District Court mentioned no need for a comparison of appellant's intrastate suburban passenger fares and its interstate passenger fares. The Association, however, contends that to support a finding that intrastate fares discriminate against interstate commerce, the intrastate fares must be lower than the interstate fares for similar service (pp. 34, 35). Both the Association (p. 33) and the State (p. 2) recognize that this is not a case involving preference or prejudice of persons or localities, but of alleged undue, unreasonable, or unjust discrimination against interstate commerce. They fail, however, to appreciate the difference in the issues to which this Court called attention in *Florida* v. *United States*, 282 U. S. 194, 214:

> "In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other. In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income."

Disparity between interstate and intrastate fares is thus no standard of discrimination against interstate commerce.

Even were it necessary, contrary to the holdings of this Court, to show disparity between interstate and intrastate fares, the disparity is obvious from the Association's evidence that the interstate coach fares of appellant produce from 2.3¢ to 2.53¢ a passenger mile (p. 11, R. 350), whereas the intrastate suburban fares which the Interstate Commerce Commission found to discriminate against interstate commerce produced an average of only 1.62¢ a mile, and some but 1¢ a mile.[2] The increase prescribed by the Interstate Commerce Commission of 21% will result in intrastate fares averaging only 1.96¢ a mile. The State, referring to intrastate one-way fares of 4.84¢ a mile, neglects to mention that these occurred only between nearby points to which the minimum fare of 15¢ applied, both intrastate and interstate (p. 18, R. 350).

Finally, the one-way fares, which are highest in cents per mile and therefore used for comparison by the appellees, are the very fares that the Illinois Commerce Commission has conceded could properly be raised to the level prescribed by the Interstate Commerce Commission. On page 8 of its exceptions to the examiner's proposed report, the Illinois Commerce Commission said:

> "Perhaps the allowance of a minimum fare of 25¢ per trip and one way fares based on approximately a 3¢ mile could be established to allow respondent 'similarity' with the North Western. This would relieve some of the out-of-pocket expense and should be the upper limit in altering intrastate suburban passenger fares."

The Association errs in stating that the Interstate Commerce Commission in *State of Illinois* v. *United States*,

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[2] For example, an unrestricted monthly ticket, customarily regarded as the equivalent of a 60-ride ticket, between Chicago and Elgin, a distance of 36.8 miles, produced revenue of only 1.0¢ a mile (R. 415).

101 Fed. Supp. 36, had disapproved an increase in one-way and round-trip fares because the existing fares were already as high or higher than interstate fares (p. 37). An increase in such fares was not granted because the other suburban fares, as increased, produced ample revenue to pay not only the out-of-pocket but the full cost of the suburban service, plus a return on investment of 3.2%.

Thereafter the Illinois Central Railroad's one-way and round-trip intrastate suburban fares were increased to 3.33¢ a mile, compared to 2.75¢ a mile for one-way and 2.5¢ for round-trip interstate coach fares. Notwithstanding that the one-way and round-trip suburban fares were already higher than the interstate fares, the Interstate Commerce Commission on March 1, 1957 found them to result in unjust discrimination against interstate commerce, and the Illinois Commerce Commission authorized a 15% increase to 3.8¢ per mile. *Illinois Central Suburban Fares*, 300 I. C. C. 53, 59, 63, 64.

Appellant's intrastate and interstate suburban fares are now on the same level. Appellant's intrastate and interstate nonsuburban fares are likewise on the same level. The relationship of its suburban intrastate and nonsuburban interstate one-way and round-trip fares[3] is the same as on the Chicago and North Western, and Chicago, Rock Island and Pacific railroads. (*Ex Parte 202, Increased Fares, Eastern and Western Railroads*, 1956, 298 I. C. C. 278; *Commutation and Multiple Fares in Illinois and Wisconsin*, 288 I. C. C. 15, 25; R. 437-439).

B. The Fair Contribution Question.

By tortuous argument the Association (pp. 38-40) and the State (pp. 11-23) attempt to support the District

[3] There are no multiple or commutation fares in non-suburban interstate service.

Court's ruling that the Interstate Commerce Commission order is invalid for lack of a finding of the intrastate suburban traffic's fair proportionate share of the total system revenue of appellant.

This Court has repeatedly made it clear that the obligation of the intrastate suburban fares, as of any other intrastate traffic, is to produce a fair share of the revenue *necessary to meet the maintenance and operating costs and to yield a fair return on the value of property devoted to transportation.* *Louisiana Public Service Commission* v. *T. & N. O. R. Co.*, 284 U. S. 125; *United States* v. *Louisiana*, 290 U. S. 70; *North Carolina* v. *United States*, 325 U. S. 507; *King* v. *United States*, 344 U. S. 254.

The fair share of revenues necessary to meet operating and maintenance costs is the amount thereof attributable to the service in question. As shown in our opening brief (pp. 21-22), the costs include not merely the out-of-pocket costs, which over a period of time would be avoided if the suburban service were discontinued, but also costs incurred jointly with other traffic such as maintenance of way and structures, general expenses, and taxes. *Northern Pacific R. Co.* v. *North Dakota*, 236 U. S. 585, 596. The Supreme Court of Illinois also has instructed the Illinois Commerce Commission that the proper cost of appellant's suburban operation includes a full proportion of the expenses incurred for all traffic of which its suburban operation is a part. *Fleming* v. *Illinois Commerce Commission*, 57 N. E. 2nd 384, 390-392.

The evidence in this case disclosed that appellant's intrastate suburban fares produced no return whatever on the value of property devoted to transportation. Further, the fares failed by $1,844,206.27 to meet the full cost of the suburban service (R. 384, 388). Even on

the lower full-cost basis as claimed by the Association, the deficit suffered by appellant was approximately 1.5 million dollars a year (R. 431). Finally, as found by the Interstate Commerce Commission, the rates failed to meet even the bare out-of-pocket cost by $306,038 a year (R. 34).

The District Court's ruling and the arguments of the Association and State that there must be a finding as to what would be a fair proportionate share of the railroad's total revenues to be contributed by the intrastate suburban traffic need only be followed to their illogical conclusion to demonstrate their fallacy. Should the Interstate Commerce Commission find that the intrastate suburban fares must contribute a certain proportion of the railroad's total revenues, any change in the railroad's total revenues would necessitate a change in the intrastate suburban fares. If appellant's earnings, through increased freight rates or increased tonnage should double, the suburban revenue would likewise have to double. Certainly no one could seriously contend for such an incongruous result.

North Carolina v. *United States*, 325 U. S. 507, upon which the District Court, Association, and State chiefly rely, specifically recognizes that the prerequisite to the exercise of the Interstate Commerce Commission's power under Section 13(4) is the failure of the intrastate traffic to contribute its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property directed to the transportation service. In the face of evidence in the *North Carolina* case indicating that the intrastate fares were more than sufficient to cover the full cost of the service, this Court required some support for the finding of discrimination against interstate commerce. This could have

been supplied by a showing and finding that the intrastate fares failed to produce a fair share of the earnings required to yield a fair return on the value of property directed to the transportation service. In the absence of such finding or of a finding that the fares were "less than compensatory or insufficient to cover the full cost of service" *id.* p. 515, the Commission's order was set aside.

The District Court (R. 464) and the Association (p. 39), attempting to explain why this Court in *King* v. *United States*, 344 U. S. 254, refused to require a finding of what contribution from the intrastate traffic would constitute a fair proportion of the railroads' total income, point to the finding that the *prescribed* fares would constitute not more than a fair proportion of the railroads' total income. They fail to offer any explanation, however, how a finding with respect to prescribed fares can satisfy an alleged requirement of findings with respect to the fares under investigation. If, however, such alternate finding, or its equivalent, supports a finding that the existing fares discriminate against interstate commerce, it has, as pointed out in our opening brief (p. 20), been made.

Apparently not satisfied that the District Court has effectually distinguished the findings in the *King* case from those in this proceeding, the Association (pp. 39, 40) and the State (p. 15) point to other findings from the *King* case which, because of the specific showing and finding in dollars of the loss incurred by appellant's suburban operation, became entirely unnecessary and inappropriate herein. In the ordinary Section 13(4) case no such specific showing is made. The Commission and courts are, therefore, required to indulge in a presumption, *i. e.* that if transportation and other conditions incident to intrastate transportation are less or no more favor-

able than for interstate transportation, then intrastate rates below the level of just and reasonable interstate rates do not contribute their fair share to the cost of operating and maintaining the railroad or yield a fair return. The need for such presumption is completely obliterated by the positive proof and finding herein of the inadequacy of the intrastate fares, which proof was made possible by the segregation of revenues and expenses of the suburban operation.

Such proof and finding also satisfy the basis for the dissent in the *King Case* of two justices who, speaking through Justice Douglas, said:

> "The Commission, of course, is authorized to regulate intrastate rates so that intrastate operations will provide a fair share of the carriers' revenue. See *Wisconsin Commission* v. *Chicago B. & Q. R. Co.*, 257 U. S. 563. But that authority rests on the Commission's power to remove discrimination. If, for example, intrastate freight operations fail to produce an adequate return as determined by reference to the cost of the intrastate operations and the investment in the intrastate business, interstate commerce is discriminated against." *id.* p. 278

The State attempts to compare the operating ratio (ratio of operating expenses to revenues) of the suburban service to the passenger operating ratio of Class I railroads, and concludes that the suburban service is maintaining its end better than the rest of the passenger service (p. 15). The comparison purports to show that appellant's suburban operating ratio in 1954 was only 114.8% compared to an average of 157.6% for the Western District in which appellant operates and 138.16% for all districts. The State overlooks that the district and national averages are computed on the full cost of service and not merely on the out-of-pocket cost which it

used in computing appellant's suburban operating ratio. Comparing like with like, we find that the operating ratio of appellant's suburban service for 1954 was 185.29% after adjustment of expenses to reflect savings from dieselization (R. 382, 388). The general passenger operating ratio of appellant, concerning which the State says there is no evidence, is shown on page 311 of appellant's Annual Report to the Interstate Commerce Commission of 1954, stipulated into the record by counsel (R. 315), to be 157.50%. The State's conclusion that the suburban service is doing better than the rest of the passenger service is clearly in error.

A new theory is now presented by the State that the Interstate Commerce Commission while masquerading under Section 13(4) of the Interstate Commerce Act, actually used its powers under Section 15 to deal with a revenue deficiency rather than a revenue discrimination of appellant's intrastate fares. Revenue discrimination obviously can result only from revenue deficiency, and Section 13(4) "dovetailed" with Section 15(a) affords all the authority necessary to correct any revenue discrimination thus caused. As stated in one of the most recent court decisions involving a Section 13(4) order, *Garden City Floral* v. *United States*, 143 Fed. Supp. 609, 613, 614:

> "In our view the evidence before the Commission warranted its finding that the intrastate rates are not bearing their fair share of the costs and expenses of the Express Agency's service. 'The determination of the Commission that the intrastate revenue for the year ending August 31, 1954, when compared with the intrastate operating expenses for the same period, left a deficit in excess of $25,000, so that for handling this intrastate traffic in Montana the railroads received no compensation, fully authorizes an increase. 'The judicial function is exhausted when

there is found to be a rational basis for the conclusions approved by the administrative body.' *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286, 54 S. Ct. 692, 694, 78 L. Ed. 1260."

The State refers to the statement in *Florida* v. *United States*, 282 U. S. 194, 214, that it is not enough for the Commission merely to find that existing intrastate rates on the particular traffic are not remunerative or reasonably compensatory (pp. 12, 24), but fails to mention that the additional findings required by the Court were simply findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service. All such findings were made herein by the Commission (R. 34, 36, 37).

Appellant disagrees with the State in its attempt to recast the basic issues as stated on page 2 of its brief:

"(1) Does the order of the Interstate Commission contain sufficient findings of fact to justify the imposition or exercise of jurisdiction to increase intrastate rates?"

(2) Are the findings of the Interstate Commission supported by substantial evidence?"

into an "ultimate" issue (p. 18):

"Will the passenger revenue deficit support the exercise of Interstate Commerce Commission jurisdiction to increase an intrastate rate which the Commission determines can be increased without any appreciable loss of traffic?"

Neither the Interstate Commerce Commission nor appellant in any way relied upon appellant's overall passenger deficit to justify the Commission's exercise of power. Certainly there was no reason to do so in the face of an annual full-cost deficit of 1.8 milion dollars a year in the suburban operation (R. 384, 388). It is entirely unfair for the State to say that merely because the Interstate Commerce Commission refused to let a deficit of the overall passenger service interfere with the removal of discrimination by the suburban fares, the Commission's action is therefore predicated upon the overall passenger deficit.

The emphasis upon appellant's overall passenger deficit comes entirely from the State. As in its comparisons of appellant's suburban operating ratio, the State offers a comparison of the out-of-pocket cost suburban deficit with the full cost deficit from appellant's total passenger operation (p. 15). Apparently carried away by the results of its disparate comparisons, the State concludes there is no undue or unreasonable discrimination against interstate commerce and in high indignation calls for brakes to be applied to loose reports and inadequate findings of the Commission! (p. 19).

The State tries to distinguish this proceeding from that in *New York* v. *United States*, 98 Fed. Supp. 855, affirmed 342 U. S. 822, which upheld an order of the Interstate Commerce Commission increasing intrastate suburban fares in New York (p. 21). The State contends that in the *New York* case the Commission merely made effective on intrastate traffic the higher commutation fares which had been found reasonable and established between stations in Connecticut and New York, and which the New York Commission had refused to grant. Here, the Interstate Commerce Commission merely made

effective for intrastate traffic the higher interstate suburban fares which had been found reasonable and had been established three months earlier between stations in Illinois and Wisconsin. (R. 37, 41-42, 75-77).

Next the State alleges that the District Court in the *New York* case approved a persons and localities preference finding by the Commission (p. 21). This is incorrect; the District Court said:

> "Since discrimination against interstate commerce is sufficient to sustain the order, we need not consider the further question as to the lawfulness of the order insofar as it finds discrimination between localities and between persons." (*id.* p. 861).

The State also refers to the findings in the *New York* case of the relationship of commutation traffic to the total operation and of the reasonableness of the interstate rates. What particular relationship is meant is not clear. As heretofore shown, however, the only relationship concerned in a revenue discrimination case is that of the revenue from the intrastate fares to the revenue required to pay the full cost of the service plus a fair return. As in the *New York* case, a finding was made of the reasonableness of appellant's interstate suburban fares in this proceeding (R. 37).

The State, without citing any authority, would require not merely a finding as to what revenue from intrastate suburban fares would be a fair proportion of the total revenues of the railroad, but that the revenue from all intrastate traffic, passenger and freight, fails to make a fair contribution (p. 22). The Commission has many times entered Section 13(4) orders, reviewed by this Court, in which only a portion of the carrier's intrastate operations was involved. No evidence or finding of the

contribution made by the other intrastate operations has ever been required. The reason is clear from the wording of Section 13(4) which states that:

> "Whenever . . . the Commission . . . finds that *any* such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination." (Emphasis supplied).

Moreover, this Court has declared that the purpose of the Transportation Act, of which Section 13(4) is a part, is to make the interstate commerce system adequate to the needs of the country by securing for it a reasonably compensatory return for *all* the work it does. *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 589.

The Interstate Commerce Commission is not relieved of its duty under Section 13(4) to remove discrimination against interstate commerce by the absence of a finding of what the rates of other intrastate traffic, not under investigation, contribute.

III. EVIDENCE SUPPORTS FINDING THAT PRESCRIBED FARES ARE JUST AND REASONABLE.

The Association's entire argument of the inadequacy of evidence to support the finding that the prescribed fares are just and reasonable rests upon a false premise that the sole test thereof was a comparison with the Chicago and North Western's suburban fares. Our opening brief (pp. 23, 24) points out the extensive evidence in the record by which the Interstate Commerce Commission was informed in detail of the plant, facilities, and personnel required in the suburban service, the exact cost of providing and inadequate revenue received from the service, and of fares of numerous other suburban carriers in the Chicago area showing that the increased fares sought by appellant, averaging 8.4% higher than the increase actually granted, would result in fares well within the zone of reasonableness.

In upholding a finding by the Commission of the reasonableness of certain prescribed minimum rates, based on evidence of similar nature, this Court said:

> "Comparisons of other rates in the same or adjacent territory, while not a conclusive test of reasonableness of a rate under investigation, have probative value. There was much other evidence bearing upon the character of the service and cost." *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, 480.

The Association's statement that suburban fares of the Chicago and North Western Railway were fixed in 1952 to cover an operation of 72 steam locomotives and three diesels as compared to the present diesel operation of appellant, is incomplete (p. 13). The same fares continue to apply although the North Western, at the time of the hearing on appellant's fares before the Interstate

Commerce Commission, was well along in its program of completely dieselizing its suburban service (R. 68, 347, 437-439).

The Association also contends that appellant's operations are much more comparable to those of the Chicago, Rock Island and Pacific than the Chicago and North Western (pp. 46, 47). The Rock Island's fares, however, are currently on the exact basis prescribed by the Interstate Commerce Commission for appellant (R. 437-439).

The State, advancing another novel theory of the law, suggests there is a difference in the reasonableness of the rates established under Section 13(4) and under Section 15 (p. 23). What the difference is, however, the State does not explain. The fact that the Interstate Commerce Commission is presently investigating its uniform system of accounts in no way discredits, as the State implies, appellant's showing of loss (p. 24). Such investigation may well leave the present system intact or may change it so as to increase the deficit attributable to the suburban service. If a railroad is not permitted to present its revenues and expenses from its accounts kept as the law requires, the Interstate Commerce Commission could never perform its duty of determining whether an intrastate fare discriminates against interstate commerce.

> "It can not be supposed that Congress, in placing this duty on the Commission, intended, in the absence of some express provision compelling it, that the Commission should follow a procedure which would preclude its acting effectively, if at all." *United States v. Louisiana*, 290 U. S. 70, 76.

IV. RIGHT OF STATE TO PRIOR OPPORTUNITY TO FIX FARES.

The Association asserts that the Interstate Commerce Commission has no power to nullify state rates unless fixed by the State upon a fair presentation of facts and accounting theory (p. 47). The intrastate fares were fixed by the Illinois Commerce Commission on September 13, 1951 (R. 25), and there has never been any criticism of the presentation of facts and accounting theory on which the State Commission then relied.

The Association assumes some duty on the carrier to present its case first to the State Commission before the Interstate Commerce Commission can act to remove discrimination against interstate commerce, and that such duty is not discharged when the carrier presents a case different in fact and theory than later presented to the Interstate Commerce Commission (51-53). These assumptions are without benefit of law. Both this Court, in *Florida* v. *United States*, 282 U. S. 194, and the District Court in *State of Illinois* v. *U. S.*, 101 Fed. Supp. 36, have recognized that the powers conferred by Section 13(4) upon the Interstate Commerce Commission are in no way contingent upon prior state action. Appellant, however, did go to the State for relief from its huge suburban loss more than 2½ years before finally turning for help to the Interstate Commerce Commission. It is noteworthy that when appellant presented its evidence to the Interstate Commerce Commission in accordance with the formula of the Commission's cost finding bureau for computing revenues and expenses of a suburban operation, not one protest was raised by the Association or the State. On the contrary, the State later insisted that appellant supply additional evidence which had not been presented in the Illinois Commerce Commission proceeding (R. 74, 75).

The Association states that the report of the Interstate Commerce Commission finds that the order of the State Commission was sustained by the case presented to it, modified to reflect the change in suburban operations (pp. 19, 51). No mention is made that the change (dieselization) occurred some two years after appellant presented its case to the Illinois Commerce Commission, and more than a year after the record had been closed. Nor does the Association mention certain other "adjustments" by the State Commission which disregarded other operating expenses of nearly $400,000 (R. 31). Appellant's case before the State Commission presented an out-of-pocket loss of $1,259,942 a year (R. 80). The Association concedes $863,925 thereof, plus additional fully distributed expenses annually of $1,280,029 (R. 428). There is little similarity between the foregoing figures and the finding of the Illinois Commerce Commission, purportedly based upon appellant's showing, of a profit of $224,000 a year (R. 86).

But whether or not the order of the State Commission was correct would seem entirely immaterial in view of the following from *State of Illinois* v. *United States*, 101 Fed. Supp. 36, 40, affirmed 342 U. S. 930:

> "The power and authority of the Illinois Commerce Commission and jurisdiction of the Circuit Court of Cook County are limited to interpreting and applying the statutes of the State of Illinois, creating and giving power to the Illinois Commerce Commission. It may very well be that, under the Illinois law, the Illinois Commerce Commission's report and finding are proper. Even if the Circuit Court of Cook County had already sustained the report of the Commission and the matter had been finally concluded the Interstate Commerce Commission would still have the power and authority under 49 U. S. C. A. § 13(4), to hear the petition in the instant case.

> and this court would have jurisdiction to determine whether or not the findings, conclusions and order of the Interstate Commerce Commission were founded upon and warranted by substantial evidence."

The State strongly implies; if not outrightly asserts, that the order of the Interstate Commerce Commission was not set aside because of lack of an opportunity for the State Commission to fix the fares on the same evidence and basis as the Interstate Commerce Commission (p. 26). Thereafter, however, the State asserts that if this is a revenue deficiency and not a revenue discrimination case, the State Commission must be given such opportunity (p. 27). Inasmuch as the Interstate Commerce Commission's order is clearly predicated on a finding of discrimination against interstate commerce, there seems little need to pursue the dubious distinctions attempted by the State.

Both the Association (p. 51) and the State (p. 29) suggest that an application should have been made jointly to the Illinois Commerce Commission and the Interstate Commerce Commission for adjustment of the suburban fares. Inasmuch as appellant's petition to the Illinois Commerce Commission was coupled with a request for leave to discontinue certain lightly patronized trains (R. 24, 25) over which the Interstate Commerce Commission has no jurisdiction, such petition was presented exclusively to the Illinois Commerce Commission. Appellant then had full faith and confidence that the Illinois Commerce Commission would deal fairly and promptly with the request for relief and, accordingly felt no need to bring in the Interstate Commerce Commission to see that the State Commission performed its duties in fixing compensatory intrastate fares.

Further, appellant could in no way compel a joint hearing. Such procedure rests entirely in the discretion of the regulatory bodies. Appellant had already had its day—several of them—before the Illinois Commerce Commission. If that body desired to sit jointly with the Interstate Commerce Commission, it had every opportunity to do so. Instead, it chose to appear before the Interstate Commerce Commission in opposition to appellant. Shortly after Section 13(4) was enacted, a joint committee of the Interstate Commerce Commission and the National Association of Railroad and Utilities Commission (an organization of state commissions) adopted the following report:

> "It is our judgment that State commissions would not expect or desire to participate in a judicial capacity, in joint hearings with members of the Interstate Commerce Commission or its examiners in any case in which they appear as advocates." *Interstate Commerce Acts Annotated*, Vol. 3, p. 1834.

V. THE INTERSTATE SUBURBAN FARES.

It is contended by the State (p. 32) and the Association (pp. 54-56) that the District Court properly set aside the Commission's order increasing appellant's interstate suburban fares. The State, however, expresses strong doubt that the interstate fares were actually set aside by the District Court's decree, and refers to its motion to affirm wherein it quoted from the District Court's opinion and decree to show that the Court did not intend to set aside the interstate fares (p. 32).

The District Court set aside the Commission's order because of alleged absence of (1) a finding regarding the contribution required of intrastate fares (R. 463, 467); (2) sufficient evidence to support the finding that the prescribed intrastate fares will be just and reasonable

for the future[4] (R. 467-469); and (3) prior opportunity of the State to adjust the intrastate fares on the same evidence and basis as done by the Interstate Commerce Commission (R. 469, 470). Not one of these alleged deficiencies has any possible relevancy to the lawfulness of interstate fares. Further, inasmuch as the supposed deficiencies afforded no justification for the District Court to set aside the intrastate fares, as shown in our opening brief, there was no reason for appellant to treat separately the interstate fares.

VI. DISCRIMINATION AGAINST INTRASTATE COMMERCE.

All of the State's contentions concerning an alleged discrimination by the prescribed fares against intrastate commerce (pp. 30-32) are mere restatements of previous arguments (pp. 12, 18, 19 and 22) to which reply has already been made (pp. 5, 10, 11 *supra*). The State's suggestion that the refund of over $500,000 which appellant would be required to make if the Commission's orders are set aside, would not come from other earnings producing a bare 2% return, is not realistic (p. 31). The suburban deficit increased by the amount of such refund, could only be met by a further drain on the system earnings.

VII. EFFECT OF THE ORDER ON THE STATE COMMISSION'S JURISDICTION.

The Association (p. 41) and the State (p. 20) bewail the loss of jurisdiction by the Illinois Commerce Commission of appellant's intrastate fares. Appellant first sought relief from the suburban deficit from the State

[4] In opening its discussion of this topic the District Court said: "We are confronted with the question of whether the evidence before the interstate commission supports its finding that the intrastate fares which it has prescribed will be just and reasonable for the future" (R. 467).

Commission and waited two years and four months for an order refusing an adjustment in fares. Appellant also sought to file with the State Commission its tariff naming the increased fares prescribed by the Interstate Commerce Commission and was rebuffed by an order suspending the fares. Had the Illinois Commerce Commission permitted the fares to take effect, it would have retained all of its jurisdiction. Actually all it has lost is its power to compel appellant to maintain suburban fares lower than those prescribed by the Interstate Commerce Commission. There is no reason to believe to be permanent even this partial restriction on the State Commission's jurisdiction, because

> "; . . when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion." *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 591.

Respectfully submitted,

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October, 1957.

Office Supreme Court, U.S.
FILED
SEP 19 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 12

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 307.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

Now comes the appellees, State of Illinois and the Illinois Commerce Commission, and pursuant to Rule 16, paragraph 1 (e) of the Revised Rules of the Supreme Court, respectfully move that the judgment of the District Court be affirmed on the ground that the questions raised by the appellant are so insubstantial as not to need further argument.

STATEMENT OF THE CASE

As appellant's Jurisdictional Statement relates, this is a direct appeal from the judgment of a statutory three-Judge District Court entered June 14, 1956, pursuant to 49 USCA 17(9) and 28 USCA 2321-25, which set aside, annulled and permanently enjoined the enforcement of an order entered by the Interstate Commerce Commission pursuant to an investigation under Section 13(4) of the Interstate Commerce Act, 49 USCA 13(4), in a proceeding entitled "Chicago Intrastate Suburban Fares of the Milwaukee Road."

On July 24, 1952, the Milwaukee Railroad filed with the Illinois Commerce Commission a petition to discontinue all of its off peak suburban trains and requested an increase in suburban fares on the remaining trains of approximately 33⅓%, or in the alternative, if the discontinuance of trains was denied, that the suburban fares be raised approximately 73⅓%. The railroad claimed an out-of-pocket deficit in the Chicago suburban operations of approximately $1,260,000. In the evidence introduced by the railroad before the Illinois Commission, no claim was made for any depreciation or maintenance of way as constituting a part of the out-of-pocket expense. The evidence before the Illinois Commission, in the extended hearings which were held, developed that the operating expenses of the Milwaukee Railroad were somewhat overstated and that by converting the suburban operation from steam to diesel locomotives the railroad could save approximately $1,000,000 annually which would eliminate any deficit on the suburban service. Consequently, the Illinois Commission on November 10, 1954, by an appropriate order, denied any fare increase to the Milwaukee Railroad.[1]

(1) The railroad had by the end of September 1954 completely dieselized the suburban operation. The report of the Interstate

The rates thus left in effect by the order of the Illinois Commission were as high or higher than the rates for diesel operated service on the Burlington and Rock Island Railroads, but were somewhat lower than those on the electrified service of the Illinois Central and South Shore and the steam locomotive service of the North Western.

Following the denial of any increase by the Illinois Commission, the Milwaukee Railroad filed, in February 1955, a petition with the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act, requesting that Commission to authorize an increase in the suburban intrastate fares upon the basis that the present intrastate fares constituted an undue burden on interstate commerce. In the proceeding before the Interstate Commission, the railroad introduced different evidence and claimed as part of the out-of-pocket expense on the suburban operation, depreciation and maintenance of right-of-way which had not been claimed or introduced before the Illinois Commission.

On November 21, 1955, the Interstate Commission issued its report (297 ICC 353, appendix C of Statement) prescribing an increase in the intrastate suburban fares.[2]

The report found that the railroad had an out-of-pocket deficit of $306,038 on the suburban operation and then prescribed fares which should (based on the 1954 movement) result in an increase in revenue of $383,000, "which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000

Commission, after allowing depreciation and maintenance of way expense of over $250,000, determined that the railroad's out-of-pocket expense was only $306,038. Thus, the Interstate Commission's report of November 21, 1955 confirmed the finding of the Illinois Commission that dieselization would save approximately $1,000,000 yearly.

(2) Some of the prescribed fares were substantially higher then even those proposed by the Railroad. See Table 1 of the appendix to the Commission Report.

annually." At the same time the report found that the Milwaukee Railroad earned from its freight operations $37,393,050 (both interstate and intrastate) and suffered a deficit from its passenger operations of $22,824,532 (mostly interstate). *Not one word is found in the report concerning the railroad's revenues* (other than suburban revenue) *nor any finding or subsidiary statement regarding the contribution that the suburban service should make as its fair proportionate share to the railroad's income.*

After overruling petitions for rehearing and reconsideration, the report was made final by order entered March 2, 1956, ordering the higher prescribed fares to become effective on April 20, 1956. (Appendix E of Statement.)

On April 13, 1956, the State of Illinois, Illinois Commerce Commission and the Milwaukee Road Commuters' Association filed an action to review the Interstate Commission's report and order pursuant to 28 USCA 1336. The statutory three-Judge District Court after full briefs and the presentation of oral arguments concluded that the order of the Interstate Commission was not supported by the requisite findings required to support its order and that the evidence failed to support the finding that the intrastate fares which were prescribed will be just and reasonable for the future.

ARGUMENT.

The decision of the District Court does not present any substantial question warranting further argument which would necessitate the devoting of additional time by the Justices of this Court. The matter pertains to an essentially local situation which has been amply heard and decided by a unanimous three-Judge District Court.

A reading of the District Court's opinion[3] clearly shows that the court properly reviewed the report and order of the Interstate Commission in the light of the pronouncements of this court in *King* v. *United States*, 344 U. S. 254; *North Carolina* v. *United States*, 325 U. S. 507; *Florida* v. *United States*, 282 U. S. 194; *Wisconsin RR Com.* v. *Chicago, B. & Q. RR Co.*, 257 U. S. 563; and the more recent decisions of *Mississippi Public Service Com.* v. *United States*, 124 F. Supp. 809, aff'd. 349 U. S. 908 and *State of North Carolina* v. *United States*, 128 F. Supp. 718, aff'd. 350 U. S. 865.

This case, as the Commission's report clearly discloses, is not a "persons or localities" discrimination but one of alleged revenue discrimination. The District Court analyzes the report and states (1) that the Commission completely ignored the controlling inquiry of what contribution from the intrastate traffic would constitute a fair proportion of the railroad's income, (2) that the making of a contribution to indirect costs and a return on investment after paying all out-of-pocket costs is not the same as a contribution of the intrastate's fair proportionate share, (3) that the evidence fails to support the finding that the

(3) Not yet reported, but found at pages 14-24 of Appellant's Statement.

prescribed rates will be just and reasonable, and (4) that the incomplete showing made to the Illinois Commission should not be allowed as the key to opening the door to the Interstate Commission. From that analysis the lower court concludes and its judgment is simply that the "justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us."[4] As was recently stated, it is the lower court's *judgment* and not the particular statements made in the opinion, that this court reviews. *Black* v. *Cutter Laboratories*, 351 U. S. 292, 297.

Appellant states in its Jurisdictional Statement that seven questions are presented, but only proceeds to discuss five as supposedly being substantial. It is to those five points that we now address ourselves and demonstrate that they are without substance.

I.

The District Court did not invalidate the order of the Interstate Commission because of the failure of the carrier to first seek relief from the State Commission. Actually, the railroad did come to the state body. The criticism by the District Court lay not in failing to apply in the first instance to the State Commission, but in the manner in which that application was presented.

While the District Court's opinion sets aside and enjoins the Commission's order for the basic reason that the order lacks the necessary findings and the evidence fails to support the reasonableness of the prescribed rates, the court quite properly questioned the procedure followed by the

(4) As this court stated in *North Carolina* v. *United States*, 325 U. S. 507 at 511: "Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear.'"

railroad and correctly holds that the State Commission should be given a chance to fix fares on the same evidence and basis as the Interstate Commission and that Section 13(4) does not contemplate the State Commission as being merely a "way station".

Every case must rest upon its own particular facts and situation. It must be remembered that a state's power over intrastate rates is exclusive to the point of actual discrimination and not until that point is reached does the Interstate Commission's jurisdiction take hold. *North Carolina* v. *United States*, 325 U. S. 507, 511. If this initial exclusive authority is of any value or is to receive more than mere lip service, it must follow that the State Commission should be afforded the opportunity to look at the same picture that the carrier presents to the Interstate Commission.

It is clear that the instant matter is factually outside the scope of the language and opinion in *State of North Carolina* v. *United States*, 128 F. Supp. 718, 724, affirmed 350 U. S. 805 and *State of Illinois* v. *United States*, 101 F. Supp. 36, 47, affirmed 342 U. S. 930. In the *North Carolina case* the question was whether the jurisdiction of the Interstate Commission was prevented until "remedies under state law had been exhausted." In the *Illinois case* it was whether the pendency of "a suit in the local courts in the State of Illinois to set aside a report and order of the Illinois Commerce Commission which refuses to permit the Illinois Central Railroad Company to make any changes or increases in its presently existing suburban fares" prevented the jurisdiction of the Interstate Commission under Section 13(3) and (4). Both opinions dealt with the exhaustion of the state remedy. Such is not the present situation.

Whether this Court in *Florida* v. *United States*, 282 U. S.

194, 210, in using the language quoted by the appellant in its Statement meant "exhaustion of state remedy" or used that language to emphasize the fundamental power of Congress to authorize the Interstate Commission to establish intrastate rates in removing discrimination, we do not know. However, we do know that this Court also stated in that same opinion, at page 212: "The Commission has no general authority to regulate intrastate rates" and again at page 214: "The authority to determine the reasonableness per se of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission." If any effect is to be given to these latter statements of this Court or to the very language of Section 13(3) requiring rates to be "made or imposed by authority of the State," the State Commission must be accorded the initial right to fix those intrastate rates.[5] Is that right a substantial one or merely fictitious? If it is substantial, then the State Commission has the right to the same evidence and the presentation of a case upon the same basis as the Interstate Commission. Otherwise a carrier could file a reduced intrastate rate with the State Commission, which naturally would be allowed without suspension or hearing, and then go to the Interstate Commission to have it set aside as constituting a discrimination against interstate commerce. *Florida* v. *United States* (*supra*) must be confined to the particular factual situation therein presented and is not contrary to the factual case decided by the District Court in the instant matter.

As the District Court remarks, even the Interstate Commission felt some compunction over the difference in presentation as its report added: "This explains, but does not excuse, its (the railroad's) incomplete showing before

(5) Some states have maximum intrastate rates set by Statute so that if that maximum is already in effect, it would be useless to go to the State Commission and the law does not compel a useless act. That is not, however, the situation in Illinois.

the Illinois Commission." A full examination of the District Court's opinion clearly demonstrates that appellant's first alleged point is without merit.

II.

Appellant's second alleged question of substance is directed to the District Court's opinion that there is insufficient evidence to support the finding that the rates prescribed will be just and reasonable.[6] A finding that the prescribed rates will be just and reasonable is necessary, *Mississippi Public Service Com.* v. *United States*, 124 F. Supp. 809, aff'd. 349 U. S. 908, and the report actually made such an ultimate finding.[7] However, the Court observed that the attempt in the Commission's report to sustain the reasonableness of the prescribed rates by comparing them with the North Western was inadequate, both in fact and in substance, when the evidence on the point was examined.[8]

(6) The opinion had already found that the Commission's order lacked the basic findings for exercising federal jurisdiction and while the court could have stopped there since it was not required to examine the evidence in the absence of a basic finding to support the order, *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Chicago, M. St. P. & Pac. R. Co.*, 294 U. S. 499, 505, yet it was altogether fitting and customary for the court to examine another point raised by the parties.

(7) A finding that the prescribed rates are just and reasonable actually becomes necessary only after the exercise of federal jurisdiction is justified. When the Interstate Commission justifiably assumes its power to remove discrimination, such rates as it may prescribe must also be just and reasonable.

(8) The court's opinion states that the Commission completely ignored the controlling inquiry of: "what contribution from the intrastate traffic would constitute a fair proportion of the railroad's income." A report, based upon substantial evidence, which clearly found what increased amount would constitute a fair proportionate contribution, thus creating a basis for exercising federal power to remove an interstate discrimination, would in turn probably support a finding as just and reasonable such rates as would make that contribution."

It is conceded by the appellant that no evidence was offered showing similarity of equipment, service or operating conditions between the Milwaukee Railroad and the North Western. As the lower court observed, the record actually shows that the lines are not comparable and even the railroad's attorney had stated, "we do not offer these North Western fares as criteria of what our fares should be." Yet the railroad now urges upon this Court the hue and cry that the lower court's decision makes impossible uniform fares and could disrupt the passenger and freight rate structures of the entire country. The record, as well as the Interstate Commission's report, shows that there was no uniformity of passenger rates in the suburban area of Chicago prior to this case and no uniformity even after the Commission's report.[9] Consequently, the lower court's opinion cannot cause any disruption of uniformity where none exists.

Even the Interstate Commission itself—as the lower court pointed out—recognizes that there must be some similarity of operation to justify comparability of rates. *Commutation and Multiple Fares Between Illinois and Wisconsin*, 288 I. C. C. 45. The Illinois Supreme Court aptly stated the proposition in *Moline Consumers Co.* v. *Com. Com.*, 353 Ill. 119 at page 126:

> "This court has held that a similarity of conditions of operation must be shown before comparison of existing transportation charges can have probative value in determining what rates are reasonable."

The judgment and statements of the lower court must be reviewed in the light of the factual situation presented. When so considered there is no substance to Appellant's second contention.

(9) There are seven railroads having substantial suburban service in the Chicago area: Rock Island, Burlington, Illinois Central, South Shore, North Shore, North Western and Milwaukee.

III.

The amount of contribution from intrastate traffic which would constitute a fair proportionate share of the carrier's total income is a finding which is basic and necessary in all alleged revenue discrimination cases. Such finding is lacking in the present case.

The one thing that always stands out in any examination of this court's opinions (including *King* v. *United States*) and of the lower courts which have been affirmed by this Court is that the Interstate Commission must make a finding, which has to be supported by the evidence, that the intrastate rate does "*not contribute its fair share of the earnings required*" to provide the transportation service, both interstate and intrastate. As said by Chief Justice Taft in *Wisconsin* v. *Chicago, B. & Q. RR. Co.*, 257 U. S. 563 at 586: "intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system," and reiterated by a unanimous court through Chief Justice Hughes in *Florida* v. *United States*, 282 U. S. 194 at 211:

> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that *intrastate traffic should pay 'a fair proportionate share'* of the cost of maintenance." (Emphasis added.)

And *King* v. *United States*, 344 U. S. 254, *does not hold that such a finding is unnecessary*, but on the contrary reaffirms the requirement: In that case this court in distinguishing the *North Carolina case*[10] said at page 270:

> "The finding which was *primarily needed, and was there found lacking*, was one that the intrastate service at 1.65 cents per mile *did not contribute its fair share* * * *." (Emphasis added.)

(10) 325 U. S. 507.

and then at page 275:

> "In the instant case the Commission does not rely upon the mere disparity between the intrastate and interstate rates. *On the contrary*, the Commission states that the Florida intrastate rates "*are abnormally low and are not contributing their fair share* * * *".'' (Emphasis added.)

In the case at bar, there is *no* finding, nor is there any evidence for such a finding if one were attempted, of the amount which the intrastate suburban fare should contribute in order to produce its "fair proportionate share" of the revenue necessary for maintaining the Milwaukee's transportation service. In fact, as before stated, there is no finding as to the Milwaukee's total revenues so as to form any basis for a determination that the $1,800,000 of suburban revenue fails to constitute its fair proportion of the railroad's revenues. The Commission's order which the District Court set aside has the skimpiest of findings and is based almost entirely on the conclusory findings of undue discrimination to support the exercise of the Interstate Commission's authority. Even in the *King case* (344 U. S. at 269) it was held that the ultimate jurisdictional findings must be supported by adequate subsidiary findings based upon the evidence. Such subsidiary findings, which would show that the increase in intrastate fares ordered by the Interstate Commission constitute no more than a fair proportion of the Milwaukee's income, are completely lacking in the order set aside by the District Court. The only findings, if the recitals in the Commission's report are considered to be findings, are that the suburban service suffers a deficit of $306,038; that the increased fares ordered by the Commission should produce $383,000 which "would eliminate the out-of-pocket deficit and would result in a contribution to indirect cost and taxes of approximately $77,000 annually," and "to the extent that

this suburban service fails to meet the out-of-pocket cost and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, state and interstate." While making these recitals the order likewise finds that the Milwaukee Railroad suffered a deficit from its passenger operations of $22,800,000 while it earned from its freight operations $37,393,000, *such freight earnings being from both intrastate as well as interstate.* Again, so far as the report shows, the interstate passenger revenue could be zero so that any increase in suburban revenue would naturally reduce the total passenger deficit, but does that show a failure of *proportionate contribution?* The report of the Commission completely fails to accord any effect to the legal requirement that intrastate rates need only to contribute their proportionate share and because that "primarily needed" finding was "found lacking" the District Court properly set aside and annulled the Commission's order.

The findings and the report made by the Interstate Commission in the instant case are comparable to those in the *North Carolina case* (325 U. S. 507) and not to those made by the Commission in the *King case.* In the *King case* the Commission found that the increased intrastate rates "will constitute not more than a fair proportion of respondent's total income" (Finding 6—278 I. C. C. 73) and that finding was backed up by subsidiary findings supported by the evidence, while in the instant case the Commission's report finds that prescribed fares will "make a fair contribution towards respondent's indirect costs and return on investment" (Finding 4). As the District Court correctly observed, a fair proportion to a carrier's total income is not the same as paying all expenses of the particular service plus making a contribution to indirect costs and return.

We again reiterate, there is not a single finding or statement as to the Milwaukee's total revenue—merely the total passenger deficit ($22,800,000) and total freight net profit ($37,393,000).

Nor is there anything in *State of Illinois* v. *United States*, 101 F. Supp. 36, affirmed 342 U. S. 93, or in *State of North Carolina* v. *United States*, 128 F. Supp. 718, affirmed 350 U. S. 805 which change the fundamental principle that a finding of the proportionate share which the intrastate needs to contribute is a prerequisite to a valid order. Not only were the ultimate findings in the *Illinois case* somewhat different (there were person-locality discriminations) but there was a specific subsidiary finding to the effect:

> "The fares approved herein will yield a return after taxes of about 3.2 per cent, and an average increase of about 20 per cent or $1,300,000 per annum, *which we find to be the approximate measure of the revenue discrimination* against interstate commerce resulting from petitioner's present multiple and commutation fares." 281 I. C. C. 552. (Emphasis added.)

In the *North Carolina case* the Interstate Commission not only found that the intrastate rates "imposed by authority of the State are abnormally low; and * * * fails to produce its fair share of the earnings required" but also found that the "rates result in undue preference of and advantage to persons and localities in North Carolina in intrastate commerce and undue prejudice of and disadvantage to persons and localities in interstate or foreign commerce" (Findings 3 and 4, 128 Fed. Supp. at p. 721).

Thus, it is clear there is no substance to the Appellant's position that the District Court fails to follow the decisions of this Court.

IV.

There was no substantial evidence which had any probative value sufficient to support a finding of reasonableness of the prescribed rates. Such evidence as the high cost of suburban operation, the unfavorable transportation characteristics of the suburban service and other matters offered can not, *per se*, sustain the assumption of jurisdiction by the Interstate Commission which is a prerequisite to any prescription of intrastate rates. The fact that intrastate rates on the suburban service "were not remunerative or reasonably compensatory" does not establish the justification for the exercise of the federal authority. *Florida* v. *United States*, 282 U. S. 194, 214.

Moreover, the Interstate Commission's justification for the prescribed rates was not based upon the high cost of the suburban service, nor on the unfavorable transportation characteristics of that operation, but rather, on the basis that the suburban service should "make all the contribution that it reasonably can." The Commission's report bluntly takes the position that suburban fares should be fixed on the basis of "how much will the traffic bear" because any less amount "increases respondent's passenger deficit." In other words, wherever there is a deficit on interstate—and practically every railroad has an interstate passenger deficit—the Interstate Commission could increase some particular intrastate fare (such as the captive commuter group) to the highest level that could be exacted regardless of any consideration to such group's "fair proportionate share" to the carrier's revenue.

The District Court refused to approve this "give till it hurts" doctrine and citing *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 483, held that the carrier could not justify intrastate rates on the basis of alleviating the interstate passenger deficit. In this, the District Court was correct and Appellant's position is insubstantial.

V.

There is no substance to Appellant's fifth contention. *First*, Appellant did not think it substantial enough to join with the United States and Interstate Commission in the latters' motion to have the lower court correct its order to eliminate from its scope the interstate fares. *Second*, the only interstate fares attempted to be fixed by the order were those for Zenda and Walworth, Wisconsin which the Milwaukee Railroad claims are part of its suburban territory, although there is only one suburban train in the morning and one in the evening which stop at those stations. *Third*, the report itself shows that the interstate fares for Zenda and Walworth were not fixed or determined by the Commission as a separate matter, but were determined solely on the basis of the prescribed intrastate suburban fares,[11] and when the basis for the intrastate fares fell so also the basis for the two incidental interstate fares. Consequently, the District Court was correct in setting aside and annulling the entire Commission order.

CONCLUSION.

For the foregoing reasons, we respectfully submit that the decision of the District Court is correct and this appeal presents no substantial question for this court's determination. We believe that the "scrupulous regards for the rightful independence of state governments" which deters federal courts from enjoining state regulatory bodies (*Alabama Commission* v. *Southern Railway Co.*, 341 U. S. 341, 349) should equally operate to deter the Interstate Commission from using its authority to grant the extraordinary relief of a Section 13(4) petition unless the burden or

(11) Finding 5 of the report states: "That respondent's interstate suburban fares on the same basis as herein prescribed for intrastate application will be just and reasonable for the future.

discrimination on interstate commerce is manifestly evident. The judgment of the District Court is simply that the justification for the exercise of federal power does not clearly appear and upon the facts in the instant case the court was correct in this determination and its judgment should, accordingly, be affirmed.

Respectfully submitted,

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September 7, 1956.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~307~~ 12

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Appellant (Defendant below),

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,
Appellees (Plaintiffs below).

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION OF APPELLEE MILWAUKEE ROAD COMMUTERS' ASSOCIATION TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 307.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Appellant (Defendant below),

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees (Plaintiffs below).

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION OF APPELLEE MILWAUKEE ROAD COMMUTERS' ASSOCIATION TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT.

Pursuant to Paragraph 1(c) of Rule 16 of the Rules of this Court, appellee, Milwaukee Road Commuters' Association, moves that the judgment of the District Court from which the appeal in this case was taken be affirmed on the ground that the questions raised by appellant are so insubstantial as not to need further argument.

STATEMENT OF THE CASE.

The Judgment Appealed From.

This is a direct appeal by Chicago, Milwaukee, St. Paul & Pacific Railroad (herein called "the Milwaukee Road"), from the judgment of a three-judge District Court entered on June 14, 1956. The judgment appealed from set aside and enjoined the enforcement of an order of the Interstate Commerce Commission authorizing and directing an increase in suburban passenger fares of the Milwaukee Road, and remanded the case to the Interstate Commission for further proceedings not inconsistent with the opinion of the District Court filed with its judgment.

The Suburban Passenger Lines Affected.

The suburban lines affected are the so-called "West Line" of the Milwaukee Road operating between Chicago and Elgin, Illinois, and the "North Line" operating between Chicago and Fox Lake, Illinois, with one suburban train operating in each direction beyond Fox Lake to and from Zenda and Walworth, Wisconsin.

The Proceeding Before the Interstate Commerce Commission.

The proceeding before the Interstate Commerce Commission in which the order set aside by the District Court was entered, was instituted by petition of the Milwaukee Road.

The petition (Ex. C to the Complaint) asked that the Interstate Commission conduct an investigation, under Section 13 of the Interstate Commerce Act, as to the effect

on interstate commerce of the intrastate suburban fares in the Chicago area as fixed by the Illinois Commerce Commission.

The petition alleged that the Milwaukee Road in October 1952 had filed an application with the Illinois Commerce Commission asking for authority to increase suburban fares over the fares theretofore approved by that Commission in November, 1951, and that the Illinois Commission had denied that application. The petition to the Interstate Commission alleges that the Illinois Commission conducted the hearings unfairly and that the denial of the application for an increase in fares resulted in an undue, unreasonable and unjust discrimination against interstate commerce.

The petition to the Interstate Commerce Commission asks:

1. That the Interstate Commission find that the "intrastate coach fares within the Chicago suburban area made or imposed by authority of the State of Illinois cause, and will continue to cause, disadvantage to and undue, unreasonable and unjust discrimination against interstate commerce" in violation of Sections 3(1) and 13(4) of the Interstate Commerce Act; and

2. That the intrastate coach fares be increased, and that "like increases" be made in the interstate suburban fares to Walworth and Zenda.

The interstate fares to the two Wisconsin villages are only incidentally involved and the request for an increase in those fares is conditioned on there being a like increase in the intervening intrastate fares.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION.

The Interstate Commerce Commission, although it found that the out-of-pocket loss of the Chicago suburban operation was less than half the amount claimed by the Milwaukee Road, entered an order (Appendices C, D, E to Appellant's Jurisdictional Statement) prescribing increased suburban fares estimated to yield additional revenue of $383,000 per year. The Interstate Commission found that this additional revenue would be sufficient to eliminate an out-of-pocket loss in the suburban passenger service of $306,000 (which includes as a so-called out-of-pocket expense, $258,172 of depreciation and maintenance-of-way expense allocated to the suburban zone) and to leave a balance of $77,000 to contribute to general overhead expense.

The Interstate Commerce Commission entered its order under Section 13(4) of the Interstate Commerce Act which gives the Commission power to fix intrastate fares where the fares fixed by state authority are found to have caused "undue, unreasonable, or unjust discrimination against interstate or foreign commerce."

The Interstate Commerce Commission based its order on the following ultimate findings and conclusions (Appendix C, Appellant's Jurisdictional Statement, pp. 36-7; also quoted in the District Court's opinion Appendix A to Appellant's Jurisdictional Statement, p. 17):

1. That the Milwaukee Road's present suburban fares result in an operating loss;

2. That the fares, as fixed by the Illinois Commerce Commission, will cause "undue, unreasonable and unjust discrimination against interstate commerce";

3. That the fares should therefore be increased to the level prescribed in the Interstate Commission's order; and

4. That the fares prescribed in the Interstate Commis-

sion's order are "just and reasonable", will produce "substantial additional revenue", and "are necessary so that travel thereunder may make a fair contribution" to the Milwaukee Road's "indirect costs and return on investment."

THE JUDGMENT OF THE UNITED STATES DISTRICT COURT.

The plaintiffs' action in the United States District Court to set aside the order of the Interstate Commerce Commission was based on the contention (which was sustained by the District Court) that the evidence before the Commission and the subsidiary findings in the Commission's order did not sustain the ultimate findings or conclusions upon which the order was based, and hence that the order could not stand.

The questions presented to the District Court mainly concerned the sufficiency of the factual basis of the Commission's order. The nature of the questions raised and the decision thereon, as stated in the opinion of the District Court (Appendix A to Appellant's Jurisdictional Statement, pp. 14-24), may be thus summarized:

1. While the Interstate Commission finds that the intrastate rates which it approves "would eliminate the out-of-pocket deficit and result in a contribution to the Milwaukee Road's indirect costs and taxes of approximately $77,000 annually and that those fares will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment," there is no evidence or subsidiary finding to show what a "fair contribution" would be. As the District Court's opinion states (Appendix A to Appellant's Jurisdictional Statement, pp. 18-20):

> "* * * at no place does the commission make any findings as to what contribution from the intrastate

suburban traffic would constitute a fair proportion of the railroad's total income. In fact the interstate commission makes no finding as to what the Milwaukee Road's total income was for the year in question, and likewise no finding as to what would be a fair proportionate share of total income of the road which the intrastate traffic now under consideration should contribute.

* * * * *

"Nor is it sufficient that the interstate commission found that, to the extent that the suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it discriminates against its freight operations. This finding is no substitute for one as to what it should contribute as a fair proportionate share of the railroad's total income. Without the latter finding the order of the interstate commission cannot stand."

2. There is nothing in the report of the Interstate Commerce Commission that indicates the extent of the obligation of the suburban service to make a contribution to the indirect costs and taxes. As to this, the District Court's opinion states (Appendix A to Appellant's Jurisdictional Statement, pp. 20-21):

"We are here confronted with the imposition of an involuntary contribution being exacted by legal means. To be sustained, it must be based upon a finding of the extent of the obligation. It cannot be supported by a vague reference to an unascertained amount of 'indirect costs and taxes' or what the suburban service can reasonably contribute to the Milwaukee Road's 'indirect costs', or 'a fair contribution toward respondent's indirect costs and return on investment'."

3. There is no sufficient evidence to support the finding that the intrastate fares prescribed by the order are, or will be, just and reasonable for the future. As the Dis-

trict Court's opinion states (Appendix A to Appellant's Jurisdictional Statement, pp. 21-23):

> "This finding rests on an averment in the report that the comparison with the fares of the Chicago and North Western Railway Company is more persuasive, as, in the words of respondent's traffic witness, 'there is a strong similarity between the suburban territory served by the Milwaukee Road and that served by the North Western, * * *.'
>
> "The evidence of J. K. Pain, the traffic witness referred to [in the Interstate Commission's report] does not support this averment.
>
> * * * * *
>
> "There is no evidence offered showing similarity of equipment, service or operating conditions.
>
> * * * * *
>
> "Without sufficient evidence of comparability of operation, there is no ground for fixing the Milwaukee Road's fares at the North Western level, or for finding that the resulting fares are just and reasonable."

4. The authority of the Interstate Commission to nullify the action of a state commission (which has primary jurisdiction) in fixing or passing upon intrastate fares, arises when the evidence shows that the state commission's action on the evidence before it, was unjustly and unreasonably discriminatory against interstate commerce. That was not shown in this case. As the District Court's opinion states (Appendix A to Appellant's Jurisdictional Statement, pp. 23-24):

> "In the state commission proceeding, which was initiated by the Milwaukee Road, the latter showed in its exhibits that the depreciation of locomotives and coaches was not included in the out-of-pocket cost. Likewise, in its exhibits in that case it did not include in out-of-pocket expense certain maintenance of way accounts involving maintenance of facilities, such as roadbed, etc. The comments in the interstate commis-

sion's report, in regard to these items, show that they were by the Milwaukee Road deliberately removed from the consideration of the state commission. It follows that facts presented by Milwaukee Road to and relied upon by the interstate commission to support its finding as to an out-of-pocket suburban deficit, were not presented to nor relied on by the Milwaukee Road in the state commission proceeding. If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.

"In *North Carolina* v. *United States*, 325 U. S. 507, at 511, the court said: 'Since the enactment of Section 13(4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate.'

"Where a railroad seeks the fixing of higher intrastate rates by the interstate commission after failing in such endeavor before a state commission, Section 13(4) does not contemplate that the state commission is to be considered only a way station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly apear from the record before us."

The decree of the United States District Court, setting aside the order of the Interstate Commerce Commission and remanding the case for further proceedings was based upon the Court's decision on the questions presented as above described. That decision was arrived at after full examination by the Court of the record before the Interstate Commerce Commission.

The case does not involve any substantial question of law for decision of this Court.

ARGUMENT.

I.

WHERE THE DISTRICT COURT HAS REVIEWED THE RECORD AND FOUND THE EVIDENCE AND SUBORDINATE FINDINGS INSUFFICIENT, AND HAS APPLIED ESTABLISHED PRINCIPLES OF LAW AS A BASIS FOR ITS DECISION, THERE IS NO QUESTION OF SUBSTANCE FOR ARGUMENT IN THIS COURT, AND MOTION TO AFFIRM SHOULD BE GRANTED.

The District Court's opinion, as shown in the foregoing statement of the case, rests on the conclusion that there is insufficient evidence, and an absence of subsidiary findings, necessary to support the ultimate findings or conclusions upon which the order of the Interstate Commerce Commission rests.

The question as to whether or not there is sufficient evidence to sustain the findings of an administrative agency is one primarily for the Court (in this case, the three-judge District Court) which reviews the decision of that agency.

As said by this Court in *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U. S. 474 (490-491):

> "Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Court of Appeals. [In this case, the three-judge District Court.] *This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied.*"*

* Note: Italics are ours, here and elsewhere, unless otherwise stated.

It was presumably this rule which led this Court to grant a motion to affirm in *Mississippi Public Service Comm.* v. *United States*, 124 F. Supp. 809, aff'd 349 U. S. 908, another recent case in which an order of the Interstate Commerce Commission was held to be unsupported by sufficient evidence and findings to justify overriding state fixed rates.

A brief review of the decision of the District Court in the present case will show:

1. That there is no colorable basis for a contention that that Court "misapprehended or grossly misapplied" the standards by which the weight and sufficiency of the evidence and the correctness of the conclusions drawn therefrom are measured;

2. That the principles of law applied by the District Court are well established by prior decisions of this Court and are not open to serious controversy; and

3. That there are thus no questions of substance involved in this appeal that would justify further argument and review of the record by this Court, and under Paragraph 1(c) of Rule 16 the motion to affirm should be granted.

II.

AN EXAMINATION OF THE POINTS UPON WHICH THE DISTRICT COURT RESTED ITS DECISION SHOWS THAT THAT DECISION WAS NOT BASED ON ANY "MISAPPREHENSION OR GROSS MISAPPLICATION" OF STANDARDS AS TO WEIGHT OR SUFFICIENCY OF THE EVIDENCE, AND THAT THE PRINCIPLES OF LAW APPLIED ARE WELL ESTABLISHED AND CALL FOR NO FURTHER ARGUMENT IN THIS COURT.

The points considered by the District Court, in arriving at its decision, and the grounds upon which those points were decided, are summarized above in our Statement of the Case (pp. 5-8, *ante*).

In general, they are:

A. (Dist. Ct. Opinion, Points 1 and 2.) That the ultimate finding or conclusion of the Interstate Commerce Commission that the increased suburban fares prescribed in its order would result in a "fair contribution" by the intrastate suburban service to the Milwaukee Road's indirect costs and taxes could not stand:

(1) Because of the absence of any finding (or, in fact, of any evidence) from which it could be determined what the amount of a fair contribution would be; and

(2) Because of the absence of any finding or showing as to the extent of the obligation (if any) of the intrastate suburban service to contribute to indirect costs and taxes.

B. (Dist. Ct. Opinion, Point 3.) The finding of the Interstate Commerce Commission that the increased suburban fares prescribed in its order are "just and reasonable," is a necessary finding, but cannot stand in this case because there is no sufficient evidence to support it.

C. (Dist. Ct. Opinion, Point 4.) The effect of the Interstate Commerce Commission's order was to nullify a prior order of the Illinois Commerce Commission refusing to increase the Milwaukee Road's suburban fares, which order was correct on the evidence presented to the Illinois Commission. The order of the Interstate Commerce Commission was predicated on different evidence, which had been deliberately withheld from the Illinois Commission. Under those circumstances, justification for the exercise of federal power to nullify the state rate did not appear with requisite certainty, and the order of the Interstate Commission entered in the attempted exercise of that power cannot be sustained.

A.

The Decision of the District Court That the Order of the Interstate Commerce Commission Cannot Stand Because of the Absence of Any Findings Showing What Would Constitute a Fair Contribution by the Intrastate Suburban Service to Indirect Costs Is in Accord With Established Principles of Law and Calls for No Further Argument Before This Court.

One of the grounds of the Interstate Commission's order prescribing increased suburban fares was that the intrastate suburban service would be thereby enabled to make "a fair contribution" to indirect costs and a return on investment (Appellant's Juris. Statement, pp. 34, 36).

But as the District Court points out (see quotation from Opinion, pp. 5, 6, *ante*) the order of the Interstate Commission makes no supporting finding and sets forth no data from which it could be determined what (if anything) would constitute a fair proportionate contribution by the intrastate passenger service to indirect or other operating costs.

As stated by the District Court (Appellant's Juris. Statement, p. 18) under the decisions of the Supreme Court, such supporting finding or findings are required to sustain the order.

Thus in *North Carolina* v. *United States*, 325 U. S. 507, (516) (quoted in the District Court's opinion), the Court said:

> "But the question posed by the Commission's conclusion was whether the particular North Carolina railroads were obtaining from North Carolina's intrastate passenger rates their fair part of such funds as were required to enable these particular railroads to render adequate and efficient service. The Commission

made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income."

And, as also pointed out in the District Court's opinion, the decision in *King* v. *United States*, 344 U. S. 254 (275), in no degree modifies the rule as laid down in the *North Carolina* case. In the *King* case, there was an express finding as to the relationship between the revenue produced by intrastate rates and the railroad's total income—a finding that is wholly missing in the instant case.

The decision of the District Court on this point is in line with the principles of law laid down by this Court and no further argument thereon is called for.

B.

PROOF THAT THE FARES PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION ARE JUST AND REASONABLE IS ESSENTIAL TO THE VALIDITY OF THE ORDER; WHEN THE DISTRICT COURT FOUND THAT THE COMMISSION'S FINDING TO THAT EFFECT COULD NOT BE SUSTAINED BY THE EVIDENCE, THE DISTRICT COURT PROPERLY HELD THAT THE ORDER WAS THEREBY RENDERED INVALID.

In this case, the order of the Interstate Commerce Commission duly found that the "prescribed fares will be just and reasonable for the future" (Appellant's Juris. Stmt. p. 36, Finding 4). That finding, as well as the existence of sufficient evidence to sustain it, was necessary to the validity of the order.

As said in *Georgia Commission* v. *United States*, 283 U. S. 765 (770):

> "It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate com-

> merce, the Commission must determine whether the existing rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level."

The question in the instant case was whether the evidence supported that finding. The District Court held, after a full review of the record, that the evidence did not support the finding, and hence that for that reason (as well as for the others stated) the order was invalid (Appellant's Juris. Stmt. pp. 21-3; quotation from opinion, p. 7, *ante*).

As pointed out by the Court, the finding that the prescribed rules were just and reasonable rests on the statement in the Commission's report (Appellant's Juris. Stmt. p. 34) that there is a "strong similarity" between the suburban territory served by the Milwaukee Road and that served by the North Western, and hence that the schedule of North Western fares, summarized in the Commission's report (Appellant's Juris. Stmt. p. 29) should be used as a basis in fixing fares for the Milwaukee Road.

In Appellant's Jurisdictional Statement (p. 12) it is suggested that there is other evidence to show that the fares prescribed are just and reasonable, although the report and order of the Interstate Commerce Commission make clear that the sole test of the reasonableness of the fares fixed was in fact the present rates of fare of the North Western.

There is no evidence to support any finding or conclusion that the Milwaukee Road's suburban operation is similar to that of the North Western and that the same rates of fare should be prescribed as those fixed for the North Western. As set forth in the opinion of the District Court (Appellant's Juris. Stmt. pp. 22-3) the evidence shows, in fact, that the operations are wholly dissimilar; and hence

that there is no justification for fixing the Milwaukee Road's fares on the North Western basis.

There is no reasonable ground upon which further argument should be required on this factual question in this Court.

C.

The District Court Correctly Held That the State Commission Had Primary Jurisdiction Over the Intrastate Fares and That Before the Interstate Commerce Commission Can Nullify Fares Fixed by the State Authority, Justification for the Exercise of Federal Power Must Clearly Appear; and in Further Holding That There Was No Justification for Exercise of That Authority in This Case.

The fact that the state authority has primary jurisdiction over intrastate rates has been clearly recognized by the decisions of this Court.

North Carolina v. *United States*, 325 U. S. 507 (511).

Illinois Central Railroad Co. v. *Public Utilities Commission*, 245 U. S. 493 (510).

As said in the *North Carolina* case, above cited (325 U. S. 507, 511):

> "Since the enactment of Section 13(4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section.
>
> * * * * *
>
> A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to federal rates must meet 'a high stand-

ard of certainty.' * * * Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear.'"

In the instant case, of the $306,000 annual out-of-pocket deficit found by the Interstate Commerce Commission to exist, approximately $260,000 represented depreciation of locomotives and equipment, and maintenance of right-of-way used by both through and suburban trains.

In the proceeding before the Illinois Commission, which preceded the application to the Interstate Commerce Commission, the Milwaukee Road, of its own volition, excluded from out-of-pocket expense, the depreciation and maintenance-of-way items referred to.

In view of the savings upon dieselation of the Milwaukee Road's suburban service, the Illinois Commission found (and correctly, as shown by the evidence in the case before it) that there was practically no cash deficit in suburban passenger operations and that the rates as fixed in 1951 should not be increased.

In the proceeding before the Interstate Commerce Commission, the Milwaukee Road included the depreciation and maintenance-of-way items as out-of-pocket expense and thus presented a different case. This fact is commented on in the report of the Interstate Commerce Commission (Appellant's Juris. Stmt. p. 32).

Under the circumstances, the decision of the Illinois Commission was not unfair and could not be held to be an unjust and unreasonable discrimination against interstate commerce. The state could not be deprived of its primary jurisdiction where it had no opportunity to pass on the case on the evidence as presented to the federal commission.

To permit the order of the Interstate Commerce Commission to stand in this case, even if it had been supported by adequate evidence, would be to deprive state commis-

sions of all power over state rates. A carrier could obtain an imposition of discriminatory state rates by sham proceedings and then seek exercise of federal power.

Cases permitting federal action while state commission orders are on appeal in state courts, *Illinois* v. *United States*, 101 Fed. Supp. 36, aff'd 342 U. S. 939; *North Carolina* v. *United States*, 128 F. Supp. 718, aff'd 350 U. S. 805—or cases where one state challenges the rates of another, *Florida* v. *United States*, 282 U. S. 194—are not authority to the contrary.

The decision of the District Court on this point (see Opinion, pp. 7, 8, *ante*) is in accordance with the principles of law as laid down by this Court.

We submit that the motion to affirm the judgment of the District Court should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 12.

Consolidated With Nos. 27 and 28.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES, STATE OF ILLINOIS AND ILLINOIS COMMERCE COMMISSION.

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STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES, STATE OF ILLINOIS AND ILLINOIS COMMERCE COMMISSION.

This appeal involves a Section 13(4) order of the Interstate Commerce Commission (297 I. C. C. 353, R. 28-41, 75-77) which was set aside and enjoined by a three-judge statutory court (146 Fed. Supp. 195, R. 460-471).

INITIAL STATEMENT.

This is *not* a persons or localities preference or prejudice matter and it is *not* a situation where the intrastate rates are raised to the level of previously fixed interstate rates.

This is a case where the Interstate Commerce Commission has raised *one set* of intrastate rates (suburban fares) upon the basis of an alleged revenue discrimination against interstate commerce.

QUESTIONS PRESENTED.

While this appeal concerns the decision of the District Court, it is actually the order of the Interstate Commerce Commission which is under attack.[1]

The basic issues on this appeal are:

(1) Does the order of the Interstate Commission contain sufficient findings of fact to justify the imposition or exercise of jurisdiction to increase intrastate rates?

(2) Are the findings of the Interstate Commission supported by substantial evidence?

Since the determination of the first question depends on mixed questions of law and fact, the issue may be more succinctly stated:

(a) Does the mere finding that the suburban passenger service is operating at a loss (while at the same time the interstate passenger operation sustains a sub-

1. The Appellants have attacked certain language of the opinion of the court and based their appeal thereon. For instance, the Solicitor General's appeal concerns only two questions which do not affect the basic judgment of the lower court, but do concern certain statements made in the court's opinion. See memorandum filed for the United States in No. 27. However, it is the lower court's *judgment* and not the particular statements made in the opinion, that this Court reviews. *Black* v. *Cutter Laboratories*, 351 U. S. 292, 297. The lower court's judgment is simply that the "justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us." (R. 470.)

stantial deficit) justify the exercise of Interstate Commerce Commission jurisdiction, and

(b) Does a finding that the suburban service has an out-of-pocket deficit of $306,000 while the total passenger deficit (almost entirely interstate) is $22,824,000 justify an alteration of suburban fares by an increase of $383,000 which wipes out the $306,000 loss and contributes $77,000 to the rest of the Railroad's operation?

STATEMENT.

Proceedings Before Illinois Commission.

On July 24, 1952, the Milwaukee Railroad filed with the Illinois Commerce Commission a petition to discontinue all of its off-peak suburban trains and requested an increase in suburban fares on the remaining trains of approximately 33%, or in the alternative, if the discontinuance of trains was denied, that the suburban fares be raised approximately 73%. After extended hearings, the Illinois Commission entered an order on November 10, 1954 in which it denied any fare increase to the Milwaukee Railroad (R. 77-92). The order of the Commission found that the expenses of the Milwaukee Railroad were somewhat overstated and that by converting the suburban operation from steam to diesel locomotives, the Railroad could save approximately $1,000,000 annually which would eliminate any deficit on the suburban service (R. 80-86).[2] In the evidence intro-

2. The Railroad had completely dieselized the suburban service by the end of September, 1954. The report of the Interstate Commission after allowing depreciation and maintenance-of-way expense of over $250,000 determined that the Railroad's out-of-pocket expense was only $306,038. Thus, the Interstate Commission's report of November 21, 1955, confirmed the finding of the Illinois Commission that dieselization would save approximately $1,000,000 annually. Appellant Railroad's statement in its brief that the Illinois Commission overestimated the Railroad's savings by $453,000 a year is done by comparing the estimate to the actual expense based only a four months' period with no showing that the four months used are average months and also, on the basis of using 2,000 H. P. diesels which had been retired from

duced before the Illinois Commission, no claim was made for any depreciation or maintenance-of-way expense as constituting a part of the out-of-pocket expense (R. 398). While the Illinois Commission rejected approximately $290,000 of claimed union station expense (R. 83-85), the Interstate Commission also rejected $240,000 (R. 33-34). The rates thus left in effect by the order of the Illinois Commission were as high or higher than the rates for diesel operated service on the Burlington and Rock Island railroads (R. 420), but were somewhat lower than those on the electrified service of the Illinois Central and South Shore and the steam locomotive service of the North Western.

Proceedings Before Interstate Commission.

After the order of the Illinois Commission the Milwaukee Road filed a petition requesting the Interstate Commission to institute an investigation under Sections 13(3) and (4) of the Interstate Commerce Act (R. 24-27). The Railroad introduced evidence concerning its expenses allocated to the suburban service which tended to show a deficit of $724,511, while evidence introduced on behalf of the protestant Commuters' Association indicated an income of $9,701 (R. 40). In the proceedings before the Interstate Commission, the Railroad claimed depreciation and maintenance-of-way as a part of their out-of-pocket expense which had not been claimed or introduced before the Illinois Commission (R. 202-203).

No revenue figures or operating ratios on either passenger or freight operations were introduced by the Milwaukee Railroad, except the revenue from the suburban passenger operation for the year of 1954 in an amount of $1,796,231

main line service and were approximately 8 years old (R. 167, 379, 385-387). The expense of diesel fuel was based on only a 47 day test period. In our Petition for Reconsideration we requested that the Interstate Commission grant a rehearing so that a full year's operation could be shown (R. 74).

(R. 382), and for the last four months of 1954 in an amount of $607,333 (R. 384). The only evidence offered concerning interstate passenger coach fares showed that the present interstate fares were the same or lower than the present intrastate fares (R. 350).

On November 21, 1955, the Interstate Commission issued its report (297 I. C. C. 353, R. 28-40) prescribing an increase averaging 20% in the intrastate suburban passenger fares, with the minimum at 25 cents per trip. Some of the prescribed fares were even higher than those proposed by the Railroad (R. 38).

The report found that the Railroad had an out-of-pocket deficit of $306,038 on the suburban operation and then prescribed fares which based on the 1954 movement "would result in an increase in revenue of $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to the indirect costs and taxes of approximately $77,000 annually" (R. 34). At the same time the report found that the Milwaukee Railroad earned from its freight operations $37,393,050 (both interstate and intrastate) and suffered a deficit from its passenger operation of $22,824,532 (mostly interstate) (R. 35). *Not one word is found in the report concerning the Railroad's revenues* (other than suburban revenue) *nor any finding or subsidiary statement regarding the contribution that the suburban service should make as its fair proportionate share to the Railroad's income.*

Petitions for reconsideration were filed (R. 45, 68), but were denied by the order of March 2, 1956 and the Railroad authorized to place into effect the increased intrastate suburban fares on April 20, 1956 (R. 76-77).

Order of District Court.

On April 13, 1956, the State of Illinois, Illinois Commerce Commission and the Milwaukee Road Commuters' Associa-

tion filed an action to review the Interstate Commission's report and order (R. 2-92). The Railroad was directed to impound the increase in the fares pending the outcome of the case. After full briefs and the presentation of oral arguments, the statutory three-judge District Court concluded that the order of the Interstate Commission was not supported by the requisite findings required to support its order and that the evidence failed to support the finding that the intrastate fares which were prescribed will be just and reasonable for the future (R. 460-471). Appeal was prayed to this court and the increase in fares continued to be impounded.

SUMMARY OF ARGUMENT.

I.

THE STATED FACTS AND THE FINDINGS MADE IN THE ORDER OF THE INTERSTATE COMMERCE COMMISSION DO NOT JUSTIFY THE EXERCISE OF JURISDICTION TO FIX AND DETERMINE INTRASTATE RATES.

Section 13(4) authorizes the exercise of Interstate Commerce Commission jurisdiction to establish intrastate rates on the basis of a revenue discrimination against interstate commerce, only upon findings, supported by subsidiary factual recitals, that the intrastate rates are not contributing their fair proportionate share of the carrier's revenues and that the increased rates will constitute no more than the intrastate's proportionate share of the income necessary for the maintenance of the carrier's transportation system. The report of the Commission in the instant case contains no such findings. The present report seeks to justify the establishment of intrastate fares on the basis of *revenue deficiency*, rather than *revenue discrimination against interstate commerce*. Section 13(4) cannot be legislated into a Section 15 rate case except by Congress. As the District Court stated, a fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment since the paying of all the costs of suburban operation and also making a contribution to the other costs of the Railroad may well be more than contributing a fair proportion of the Railroad's total income. Not only are the findings insufficient, but the facts disclose no actual revenue discrimination against interstate commerce and no disparity of rates between the intra and inter state fares.

II.

THE REPORTED FACTS AND SUBSIDIARY RECITALS, AS WELL AS THE EVIDENCE, DO NOT SUPPORT THE FINDINGS THAT THE RATES ARE JUST AND REASONABLE.

Intrastate rates established by the Interstate Commerce Commission must be just and reasonable. The evidence in this record does not support such a finding. The reasonableness of rates cannot rest upon a comparison of the rates prescribed for other railroads without a showing of similarity of operating conditions. No showing was made that the operating conditions of the North Western Railroad were similar to the Milwaukee. Similarity of territory is not equivalent to similarity of operating conditions. Neither will cost of service sustain the reasonableness of a Section 13(4) intrastate rate on the basis of a removal of undue discrimination against interstate commerce when the cost of service is that of the intrastate operation and there has been no previously fixed rate for the same interstate operation. Just and reasonable intrastate rates are not established on the basis of ability to pay.

III.

THE DECISION OF THE DISTRICT COURT THAT THE STATE COMMISSION SHOULD BE AFFORDED THE CHANCE TO FIX RATES ON THE SAME BASIS AS THE INTERSTATE COMMISSION IS FULLY JUSTIFIED BY THE FACTUAL SITUATION IN THIS CASE.

The rate increased by the Interstate Commission in this case is primarily intrastate. The question of a deficit arising from intrastate suburban fares and the fares necessary to remove such a deficit should be decided solely by the state commission and not the Interstate Commission. If, however, the Interstate Commission is allowed jurisdiction to fix an intrastate rate merely because it is non-

compensatory, the state commission should be allowed to pass judgment on that noncompensatory feature by examining the same evidence as is offered to the Interstate Commission. Especially is this true when the deficit determined by the Interstate Commission is under a formula which that Commission is presently investigating on the ground that it is doubtful if it gives an accurate picture of the passenger deficit. No hardship results upon the carrier by requiring it to produce the same evidence and present the case upon the same basis to both the state and federal commissions, since Section 13(3) authorizes joint hearings and the usual procedure in suburban fare cases has been to make application before both commissions at the same time and have a joint hearing.

IV.

THE ORDER OF THE COMMISSION CREATES A DISCRIMINATION AGAINST INTRASTATE COMMERCE INSTEAD OF REMOVING A DISCRIMINATION AGAINST INTERSTATE COMMERCE.

In the absence of any revenue figures other than suburban revenues, the only comparisons from the evidence submitted disclose that the suburban fares are contributing more than their proportionate share to the total operations of the railroad. Also the evidence shows that the intrastate fares are higher than the interstate fares. Such disparity compels the suburban passenger fares to contribute to costs of the railroad in a greater proportion than the interstate passenger fares and creates an actual discrimination against intrastate commerce.

V.

THERE IS NO INDEPENDENT BASIS FOR ESTABLISHING THE TWO INTERSTATE FARES AND THE DISTRICT COURT ACTED PROPERLY IN SETTING THEM ASIDE.

The only basis for prescribing the interstate fares for Zenda and Walworth were on "the same bases prescribed for intrastate application." When the basis for the establishment of the intrastate rate fell, the basis for the two incidental interstate fares likewise fell.

ARGUMENT.

I.

THE STATED FACTS AND THE FINDINGS MADE IN THE ORDER OF THE INTERSTATE COMMERCE COMMISSION DO NOT JUSTIFY THE EXERCISE OF JURISDICTION TO FIX AND DETERMINE INTRASTATE RATES.

The authority conferred by Section 13(4) upon the Interstate Commerce Commission did not deprive the states of their primary right to regulate intrastate rates, and the Interstate Commission's power is dominant *only* insofar as necessary to remove (1) an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or (2) undue, unreasonable or unjust discrimination against interstate or foreign commerce caused by existing intrastate rates.

As previously stated, this is not a persons or localities preference, but the order must stand or fall on the basis of *undue, unreasonable* or *unjust* discrimination against interstate commerce. Do the facts and findings in the order show, *first*, a revenue discrimination, and *second*, an undue or unreasonable discrimination?

While the order concludes with the necessary ultimate findings that the intrastate suburban fares imposed by the authority of the State of Illinois cause undue, unreasonable and unjust discrimination against interstate commerce and that the prescribed increased fares will remove that discrimination, the only subsidiary finding to justify that conclusion is the one statement that the suburban service is operating at a loss.

Not one word is found in the report and consequently no finding is made as to the revenues of the Milwaukee either with respect to total passenger service or total freight. The report does find that the revenue from the suburban service is $1,799,140 (R. 34), but fails to indicate anywhere the revenue from the other operations either on an intrastate or interstate basis or on a total basis. The report contents itself with the fact that the total passenger service has a $22,800,000 deficit and the freight service (both interstate and intrastate) results in a $37,400,000 net income (R. 35). So far as the report shows, the interstate passengers could have been transported for nothing, while the intrastate suburban passengers contributed $1,800,000 to the Milwaukee's revenues.

This Court has specifically held that a mere finding that a rate is non-compensatory is not sufficient to sustain the extraordinary imposition of Interstate Commerce Commission jurisdiction over intrastate rates. In *Florida* v. *United States*, 282 U. S. 194, the court speaking through Chief Justice Hughes analyzes the exercise of jurisdiction under Section 13(4) by stating at page 211:

> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that *intrastate traffic should pay 'a fair proportionate share'* of the cost of maintenance." (Emphasis added.)

and at page 214:

> "But to justify the Commission in the alteration of intrastate rates, it was not enough *for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunerative or reasonably compensatory.* The authority to determine the reasonableness *per se* of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission. In considering the authority of

the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, *the question is that of the relation of rates to income.*" (Emphasis added.)

The requirement that the intrastate rates "should pay a fair proportionate share of the cost of maintaining an adequate railway system", *Wisconsin* v. *Chicago, B. & Q. R. R. Co.*, 257 U. S. 563, 586, is one of substance and not mere form. As the court so aptly stated in the *Florida* case (*supra*) "the question is that of the relation of rates to income." Being a matter of real substance, a finding as to the "fair proportionate contribution" to the carrier's revenues by the intrastate rates must be made.

The Appellant Railroad would lead one to believe that such a finding is not necessary,[3] while the Appellant Interstate Commerce Commission contends that the equivalent of such a finding has been made[4]. However, the Solicitor General has conceded both—that such a finding is required and that such a finding has not been made.[5]

The many decisions of this Court in which it has been specifically[6] stated that the order of the Interstate Commission either lacked or contained the finding that the intrastate rates were "not contributing their fair share" to the revenues required to maintain an adequate transportation system[6] should be the answer to the contention

3. Milwaukee's brief in No. 12, page 19.

4. Interstate Commerce Commission's brief in No. 28, page 24.

5. Solicitor General's memorandum filed in No. 27 in which his appeal is limited to only two questions, neither of which pertain to the adequacy of the findings. See also his Jurisdictional Statement in No. 502, October Term, 1956.

6. *Florida* v. *United States*, 282 U. S. 194, 214, 215; *North Carolina* v. *United States*, 325 U. S. 507, 516; *King* v. *United States*, 344 U. S. 254, 270, 275. In the latter case this court in distinguishing the *North Carolina* case said:

"The finding which was *primarily needed*, and *was there found lacking*, was one that the intrastate service at 1.65 cents per

of the Railroad. Not only has this Court consistently looked for such a finding but such a required finding logically follows when the issue is a revenue discrimination. Mere disparity of rates between intrastate and interstate does not constitute revenue discrimination.[7] Consequently, how else can the relationship of intrastate rates to income show a revenue discrimination except by findings which show what the income of the carrier is and the fair proportionate share that the intrastate rates should bear to the total revenue of the carrier. These findings can be in the recitals of the order as statements of fact and need not be in the "formal or ultimate findings." However, the report and order of the Commission must show facts which disclose a reasonable basis that the intrastate rates are not contributing their "fair proportionate share" to the total revenues required for maintaining the railroad system. Certainly, some significance must be given to the words "fair" and "proportionate." This Court would not continually use a meaningless phrase that had no factual importance.

In the case at bar, there is no finding nor is there any factual recitation of the amount which the intrastate suburban fare should contribute in order to meet its "fair proportionate share" of the revenue necessary for maintaining the Milwaukee's transportation service. In fact, as before stated, there is no finding or factual recitation as to the Milwaukee's total revenues upon which to form a basis for a determination that the $1,800,000 of suburban revenue fails to constitute its fair proportion of the Railroad's revenue. On an operating ratio basis, the suburban

mile *did not contribute its fair share* * * *." (Emphasis added.)

Cases upholding Interstate Commission orders where the Commission found a persons or localities discrimination are not in point.

7. *North Carolina v. United States*, 325 U. S. 507, 516; *King v. United States*, 344 U. S. 254, 270.

service operates at 114.8%. However, there is no finding and no evidence as to the general passenger operating ratio of the Milwaukee.[8] If we use any district or regional operating ratio or the national average we find that the suburban service is maintaining its end better than the rest of the passenger service.

In answer to the Interstate Commission's "equivalent theory" we think a study of the findings approved in *King v. United States*, 344 U. S. 254, 268, which were:

> (a) that "transportation conditions incident to the intrastate transportation of freight in Florida are not more favorable" but are "less favorable" than interstate freight;
>
> (b) that the "present interstate freight rates" within Florida "are just and reasonable;"
>
> (c) that the "Florida intrastate rates, * * * *are abnormally low and are not contributing their fair share to the revenues required*" to render an efficient service;
>
> (d) that the establishment of "intrastate rates and charges increased sufficiently to equal the level herein approved will substantially increase respondent's revenues therefrom, and *will constitute not more* than a fair proportion of respondent's total income;"

and which were supported by a lengthy report consisting of a factual analysis and history of the Florida intrastate rates (see 278 I. C. C. 41 to 72),[9] are wholly different and

8. The operating ratios of Class I railroads for passenger service are:

Year	All District	Eastern District	Pocahontas region	Southern region	Western District
1954	138.16	121.18	167.22	139.68	157.60
1955	137.60	122.84	165.26	137.39	154.84

Source: Sixty-Ninth Annual Report on Transport Statistics in the United States (ICC) Table 99, page 61.

See: *King v. United States*, 344 U. S. 254, 262, where the court referred to the operating ratios for the passenger service.

9. The Commission there states: "Our power to require an increase in intrastate rates depends upon whether intrastate traffic

can not even be considered similar, let alone "equivalent", to the findings and report in the case at bar. Here the report merely recites as subsidiary facts that:

> (a) the total revenues from the suburban service were $1,799,140 while the expenses were $2,269,404 and credit for non-revenue passengers of $164,226 results in an out-of-pocket deficit of $306,038.
>
> (b) if the fares were increased 20% with a minimum of 25¢ per trip, the increased revenue based on 1954 movement would be about $383,000 "which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes of approximately $77,000 annually."
>
> (c) In 1954 Respondent earned from its freight operations $37,393,050 and suffered a deficit from its passenger operations of $22,824,532 resulting in a net railway operating income of $14,568,518.

From such recitals the report draws the conclusion:

> "To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, State and interstate." (297 I. C. C. at page 359, R. 35-36.)

The report then makes the formal findings that the present intrastate suburban fares cause an undue, unreasonable

---

is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. Respondents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, *more nearly proportionate to the contribution thereto made prior to the increase* in Ex Parte No. 162 and Ex Parte No. 166. *We may properly use such prior contribution as a valid criterion of fairness*, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida." (278 ICC at 67.) Here the Commission was raising intrastate rates to the level of previously fixed interstate rates; and still the requirement of fair proportionate contribution was necessary.

and unjust discrimination; that such discrimination should be removed by establishing the fares prescribed which fares "will be just and reasonable for the future" and are necessary "so that the travel thereunder may make a fair contribution to the respondent's indirect cost and return on investment". Not only is there no comparison between the detail and factual study made by the Commission in 278 I. C. C. 41 with the report of the Commission in this case but there is a distinct difference between the ultimate findings themselves. As the lower court so aptly stated (146 F. Supp. 195) at page 199 (R. 465):

> "A fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment. Paying all of the costs of suburban service and, in addition, making a contribution to the other costs of the railroad, may well be more than contributing a fair proportion of Milwaukee Road's total income. Nor is it sufficient that the interstate commission found that, to the extent that the suburban service 'fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs', it discriminates against its freight operations. This finding is no substitute for one as to what it should contribute as a fair proportionate share of the railroad's total income. Without the latter finding the order of the interstate commission cannot stand."

Both appellants, The Milwaukee Railroad and the Interstate Commerce Commission would have this court construe Section 13(4) to mean *revenue deficiency*, rather than *revenue discrimination against interstate commerce*. Their entire approach is on the basis, as is the Commission's report itself, that these intrastate suburban rates should be fixed and determined as if it were a general Section 15(1) matter. The tendency of the Commission has been more and more to legislate Section 13(4) down to a Section 15(1) proceeding. They now seek to have this Court sanction such legislative usurpation. If Section 13(4) is to be

reduced to an ordinary revenue deficiency determination, Congress should do so and not the Interstate Commerce Commission.

We respectfully submit that the ultimate issue before this Court is simply this: *Will the passenger revenue deficit support the exercise of Interstate Commerce Commission jurisdiction to increase an intrastate rate which the Commission determines can be increased without any appreciable loss of traffic?* Regardless of refined legalistic pronouncements, that is the fundamental basis of the instant Interstate Commission's report. It is frank enough to admit it by bluntly stating:

> "* * * the fact that respondent cannot make a profit or at least so far has been unable to make a profit on its other passenger-train service is no reason for depriving it of an opportunity to make a profit on its suburban operations if it can be done at lawful fares." (297 I. C. C. at 359, R. 36.)

The mere addition at the end of the statement "if it can be done at lawful fares" adds nothing, especially when the so-called "lawful fares" are arrived at without comparing the contributions made by intra and inter state traffic to determine if there is any actual discrimination, let alone any "undue discrimination." "Lawful fares" in the absence of "unjust discrimination against interstate commerce" are those prescribed by the State. The District Court refered to this disregard of fundamentals by saying:

> "The limitless requirements implicit in the practice just cited from the report are reminiscent of public fund raising campaigns which used as their slogan 'Give till it hurts'." (146 F. Supp. at page 200, R. 467.)

The only evidence in this record concerning the comparison of fares is the schedule showing that the present intrastate rates range from 4.84 to 2.53¢ per mile while the

interstate fares are from 2.53 to 2.30¢ per mile (R. 350), and the report itself states that "Respondent's present interstate and intrastate coach fares, * * * between points in this area are made 2.5 cents per mile, minimum 15¢." (297 I. C. C. at 354, R. 29).

Not only do we submit that there has been no actual showing of any *discrimination* against interstate commerce, but the report clearly fails to show "*an undue, unreasonable and unjust discrimination.*" On the basis of the facts stated in the report, the $306,000 suburban service deficit amounts to but 1.3% of the passenger deficit of $22,800,000 and amounts to less than a 1% drag on the $37,000,000 net earnings from the freight operations. Does such *de minimis* revenue deficiency even if considered to be discriminatory against interstate commerce amount to an *undue and unreasonable* discrimination? We submit that it is high time the brakes were again applied to the loose reports and inadequate findings of the Interstate Commission.[10] The mere statement that there is undue, unreasonable and unjust discrimination against interstate commerce without reciting facts to support such conclusion should be condemned.[11] The District Court has expressed its censor in holding that "justification for the exercise of federal power to nullify state rights does not clearly appear from the record before us."

The state commissions are fully aware of the need for an efficient, strong and adequate national transportation

10. "Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, * * *." *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 590.

11. This court in *North Carolina* v. *United States*, 325 U. S. 507, at 512 cautioned the Commission that Congress intended some meaning and weight to be given the words "unjust discrimination" and that the court would not condone an over-simplified form of proof.

system. However, we also believe that the mass transportation which is involved in these suburban fare cases is equally important to the national interest. The problems of traffic congestion and the large loss of life in traffic accidents require, in the public need, the promotion and continuance of adequate mass transportation commuter service at reasonable rates. Exacting some subsidy from the freight service to support mass commuter transportation service is as justifiable as requiring the freight service to support interstate passenger service.[12] Just and reasonable rates depend upon the value of the service as well as upon the cost of service,[13] and in the determination of local mass transportation commuter fares, the state commissions are in a much better position to make that determination than the Interstate Commission.

The action of the Interstate Commission in fixing and establishing the intrastate suburban fares for the Milwaukee Railroad, if affirmed by this Court, will remove such fares from the jurisdiction of the Illinois Commission. There is no saving clause in the Commission's report such as was mentioned in the *North Carolina* and *King* cases,[14] and it is questionable if one could be made as this is not a general order raising intrastate fares but a specific order for a particular rate on a specified railroad.

12. See the recent decision of the Commission in "Increased Fares, Official Territory, 1956 decided April 29, 1957", 300 I. C. C. 239, wherein the Interstate Commission allowed a 5% increase in coach fares but refused the full 45% increase asked on first class fares. It is highly doubtful if the increase of 5% for coach and 20% on first class fares will cover the passenger deficit even by excluding the dining car deficit.

13. The Appellant Interstate Commission says "that the determination of the amount of reasonable contribution toward indirect cost involves the exercise of an informed judgment based primarily upon value of service and not upon cost" (its brief in No. 28, page 23), but apparently feels that only the Interstate Commission has sufficient "informed judgment."

14. 325 U. S. 507, 518; 344 U. S. 254, 276.

The report and order in this case is different from *State of New York* v. *United States*, 98 F. Supp. 855, aff'd 342 U. S. 882, and *State of Illinois* v. *United States*, 101 F. Supp. 36, aff'd 342 U. S. 930. In the *New York* case the order of the Commission merely made effective for intrastate traffic within the State of New York the higher interstate commutation rates which had been found to be reasonable and had been established between stations in Connecticut and New York, pursuant to 269 I. C. C. 87, which increase the New York Commission had refused to grant. In sustaining the report of the Commission the court, in addition to approving the persons and localities preference finding, also stated at page 861:

> "We also have findings as to relationship of commutation traffic to the total operation. We have a finding of reasonableness of the interstate rates which implies a correct percentage allocation of commutation revenue and expense."

In the *Illinois* case, the Commission not only made a specific subsidiary finding on revenue discrimination to the effect that:

> "The fares approved herein will yield a return after taxes of about 3.2 per cent, and an average increase of about 20 per cent or $1,300,000 per *annum, which we find to be the approximate measure of the revenue discrimination* against interstate commerce resulting from petitioner's present multiple and commutation fares" (281 I. C. C. at 552) (Emphasis added).

but the Commission also stated that the Illinois Central's multiple fares were below those the Commission had recently approved in another proceeding and further found that the prescribed fares would remove a person-locality discrimination against interstate commerce which existed in connection with petitioner's present multiple and commutation fares (Finding 7, 281 I. C. C. at 553). In that case the Commission also found "that in connection with

its minimum and round-trip suburban fares, petitioner has not shown any person-locality or *revenue discrimination against interstate commerce*." (Finding 2, 281 I. C. C. at 552) (Emphasis added). In the instant case, the Interstate Commission has raised the minimum intrastate fare to 25¢ per trip and the suburban one-way fares are to be based on 3¢ per mile (297 I. C. C. at 361, R. 39) while at the same time finding that the Milwaukee's interstate fares in the Chicago area are 2.5¢ per mile and the minimum, 15¢ (297 I. C. C. at 354, R. 29). Hence, on the Commission's own statement, the actual interstate fares are below those which the Commission prescribes for intrastate.

As we have before pointed out, the report shows a deficit from passenger operations of $22,824,890 while the 'out-of-pocket' deficit attributable to the suburban service is $306,038. The report further shows that Milwaukee earned from its freight operations over $37,300,000 but does not show how much of that net income is attributable to Illinois intrastate freight or how much is due to purely interstate commerce. If the Illinois intrastate freight contributed only a small percentage of the total net income, such intrastate freight would more than offset the suburban passenger deficit to a greater proportion than the interstate freight gives to the interstate passenger service. The absence of any findings which would indicate that the intrastate revenues (freight and passenger) fail to contribute their fair share to the total revenues of the carrier—and there is no evidence in the record upon which to predicate any such findings—should clearly sustain the position of the appellees, *i.e.*, that there is no undue burden on interstate commerce caused by the intrastate suburban fares.

We, therefore, respectfully submit that in the absence of the requisite basic finding of "fair proportionate contribution" there was no basis for the imposition of the

Interstate Commission's authority to establish intrastate rates.[15]

II.

THE REPORTED FACTS AND SUBSIDIARY RECITALS, AS WELL AS THE EVIDENCE, DO NOT SUPPORT THE FINDINGS THAT THE RATES ARE JUST AND REASONABLE.

If the Interstate Commission properly exercises its jurisdiction to remove an undue and unjust discrimination against interstate commerce under Section 13(4), it must find that the rates it establishes are just and reasonable, *Mississippi Public Service Commission* v. *United States*, 124 F. Supp. 809, aff'd 349 U. S. 908. The statute confers no authority to raise intrastate rates above a reasonable level, *United States* v. *Louisiana*, 290 U. S. 70, 78. However, it must be kept in mind that we are proceeding under a Section 13(4) discrimination against interstate commerce and not under Section 15 to establish just and reasonable rates.

Here again, the Appellants argue that there was introduced all sorts of evidence on cost of service and deduce that such costs make the prescribed rate just and reasonable and therefore a justification for the Commission's order. In fact, the Interstate Commission goes so far as to say that under the law of Illinois lower fares could not be prescribed by the Illinois Commission—another way of attempted justification for the order.[16] Suffice it to say that what the Interstate Commerce Commission overlooks is that the Illinois Supreme Court passes on the Illinois Commission's orders and the Illinois Commission's deter-

15. In the absence of a basic finding to support the order it is not necessary to examine the evidence. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Chicago, M. St. P. & Pac. R. Co.*, 294 U. S. 499, 505.

16. Interstate Commission's brief in No. 28, page 33.

mination of whether or not there is a loss with the establishment of a just and reasonable rate in connection therewith. It is one thing to make our own determination of losses and rates and another to have the Interstate Commerce Commission make the determination for us.[17] The suburban expenses on a fully distributed basis, as well as on an out-of-pocket cost, follow the System of Accounts which the Interstate Commission is now investigating and which allocates expenses between the various services. Besides, if the Milwaukee thought that the Illinois Commission's order denying an increase was erroneous on the evidence submitted, they could have appealed and taken advantage of the *Fleming* case (57 N. E. (2) 384, 388 Ill. 138).

As we have demonstrated under Point I (*Supra*), the justification for the exercise of Interstate Commerce Commission jurisdiction does not rest alone on cost of service but on unjust discrimination against interstate commerce. An unremunerative intrastate rate does not authorize Interstate Commission jurisdiction to raise that rate, *Florida* v. *United States*, 282 U. S. 194, nor does a mere disparity in rates, *North Carolina* v. *United States*, 325 U. S. 507, justify such jurisdiction.

17. Especially is this true at this time. The Interstate Commission has opened an investigation as to the Passenger Train Deficit and the "rules governing operation of operating expenses, etc., between freight and passenger service." 70th Annual Report of I. C. C., page 53. See also, Commissioner Mitchell's dissent in "Increased Fares, Official Territory, 1956", 300 I. C. C., 239 (April 29, 1957) where he states:

> "The alleged passenger deficit is arrived at by using an old formula of the Commission which many of us doubt gives an accurate picture of the passenger operation. This Commission, itself, is now engaged in an investigation covering that very formula. Unfortunately, it will be some time before the report will be issued, but I am hopeful, and believe, that the formula will be materially changed and, the enlarged and exaggerated passenger deficit now shown by using our present formula will be eliminated to a great extent."

Outside of costs, the report's only justification for the reasonableness of the prescribed rates is a comparison with the rates of the North Western Railroad. It is conceded by the Appellants that no evidence was offered showing similarity of equipment, service or operating conditions between the Milwaukee Railroad and the North Western. While rate comparison may have some probative value when used in the right situation, *Youngstown Sheet and Tube Co. v. United States*, 295 U. S. 476, 480, they do not establish the reasonableness of rates without a similarity of conditions and operations.

However, both Appellants argue that the District Court has mis-read the Commission's report[18] and argue that the North Western fares and those of other railroads were introduced for the purpose of proving that the suburban traffic could bear increased fares. This is not a case where the interstate rates are being raised to the level of a previously determined reasonable interstate rate.

Again, we are back to the fundamental issue—will mere cost of service with the showing that the traffic can bear increased rates justify the Interstate Commerce Commission to establish higher intrastate rates? If proportionate contribution in relation to interstate or total income is not necessary, then the reasonableness of the rate becomes the ability to pay and the value of service becomes what the traffic will bear, instead of an effort to remove a "real discrimination against, and obstruction to, interstate commerce".[19]

18. If the court mis-read the report, it was justified in so doing since we had called attention in our petition for reconsideration before the Commission that the report rested the reasonableness of the rates upon such comparison (See R. 72-73), and if the real purpose of the Commission was as the Interstate Commission's counsel now states, the Commission should have modified its report so that it stated what they now say was intended. We believe the report speaks for itself, rather than the meaning now supplied by counsel.

19. *Wisconsin Railroad Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 590.

III.

THE DECISION OF THE DISTRICT COURT THAT THE STATE COMMISSION SHOULD BE AFFORDED THE CHANCE TO FIX RATES ON THE SAME BASIS AS THE INTERSTATE COMMISSION IS FULLY JUSTIFIED BY THE FACTUAL SITUATION IN THIS CASE.

The opinion of the lower court that if "different evidence is to be offered or a different basis of fares is to be urged before the Interstate Commission, the state commission should have been given a chance to fix fares on the same evidence and same basis" (R. 469) must be read in context with the court's decision. The court had already decided that the report of the Commission lacked a finding as to what the intrastate fares should contribute as a fair proportionate share of the Railroad's total income and "without the latter finding the order of the Interstate Commission can not stand" (R. 465).

The importance of the submission to the state commission on the same basis and evidence becomes apparent when the facts of this case are studied and arguments of the Appellants analyzed. The record clearly shows that the rates sought to be increased are primarily intrastate (the two so-called interstate suburban points in Wisconsin are insignificant). The railroad came to the Illinois Commission and presented a case which the state commission did not feel justified an increase in rates. It was purely a deficit question on the intrastate suburban rates and the Illinois Commission determined on the record before it that the alleged deficit was non-existent, and this determination was not appealed by the Milwaukee Railroad. Instead, an entirely new forum was sought and a different case presented.[20]

20. Appellant Railroad states that the items not included before the State Commission were either non-existent (depreciation on locomotives of $150,000) or of a minor consequence ($103,000 on maintenance of way). The so-called non-existent depreciation could have been estimated (even steam locomotives have depreciation)

Not a different case from the standpoint of making a showing of discrimination against interstate commerce, but a different showing of expense and resulting revenue deficiency. Unless there is some requirement of submitting the same case to the state commission, a carrier could file a reduced intrastate rate with the state commission, which normally would be allowed without suspension or hearing, and then go to the Interstate Commission to have it set aside as constituting a discrimination against interstate commerce.

As we have hereinbefore pointed out, the Milwaukee Railroad and the Interstate Commission seek to reduce the proof and evidence in a Section 13(4) proceeding to that required in a Section 15 rate case—in place of revenue discrimination against interstate commerce mere revenue deficiency. If this is to be the construction of Section 13(4), then it is imperative that the state commission be given the same evidence and basis for establishing a just and reasonable rate. Otherwise, a state commission is not even a "way station in a journey to the Interstate Commission" but is reduced to a bulletin board for the posting of the Interstate Commission order.

And it is no answer to say, as the Milwaukee Railroad contends,[21] that because the state commission entered its appearance and members of its staff participated in the Interstate Commission proceeding, that the state commission is charged with having received the evidence therein produced and should enter an order thereon. The Railroad's position would not even let the state commission be a way station.

The doctrine announced by the District Court in no way curtails this court's decision in *Florida* v. *United States*, 282 U. S. 194, or the authority conferred by Section 13(4). The power of the Interstate Commission to remove undue

and if $103,000 is of minor significance, then there was no reason to include it in the Interstate Commission proceedings.

21. Its brief in No. 12, page 16.

discrimination,—"real discrimination"—against interstate commerce is not diminished if a factual showing is made to support a finding of a failure to contribute a fair proportionate share of the carrier's income. It is only when a case is presented on revenue *deficiency*, not discrimination, for the establishment of a just and reasonable intrastate rate—and without a prior proceeding having fixed a reasonable interstate rate to which level the intrastate rate is sought to be raised—that the requirement of a presentation to the state commission upon the same basis and evidence becomes necessary. In *State of North Carolina* v. *United States*, 128 F. Supp. 718, 724, aff'd 350 U. S. 805, the question was whether the jurisdiction of the Interstate Commission was prevented until "remedies under state law had been exhausted" and in *State of Illinois* v. *United States*, 101 F. Supp. 36, 47, aff'd 342 U. S. 930, it was whether the pendency of "a suit in the local courts in the State of Illinois to set aside a report and order of the Illinois Commerce Commission which refuses to permit the Illinois Central Railroad Company to make any changes or increases in its presently existently suburban fares" prevented the jurisdiction of the Interstate Commission under Section 13(4). Both opinions dealt with the exhaustion of the state remedy. Such is not the present situation and each case must rest upon its own particular facts and situation.[22]

22. Whether this court in *Florida* v. *United States*, 282 U. S. 194, 210, in using the language quoted by the Milwaukee Railroad (its brief pages 17-18) meant "exhaustion of state remedy" or used that language to emphasize the fundamental power of Congress to authorize the Interstate Commission to establish intrastate rates in removing discrimination we do not know. However, we do know this court also stated in that same opinion at page 212: "The Commission has no general authority to regulate intrastate rates" and again at page 214: "The authority to determine the *reasonableness per se of intrastate rates* lay with the state authorities and not with the Interstate Commerce Commission". *Florida* v. *United States* must be confined to the particular factual situation therein presented and is not contrary to the factual case decided by the District Court in the instant matter.

If the states are to retain any vestige of jurisdiction or authority over the determination of intrastate rates, this minimum right—the opportunity to make such determination upon the same evidence that the carrier presents to the Interstate Commission and as an independent body and not a mere rubber stamp—must be sustained.

Such a requirement does not become a condition precedent in the sense that the proceedings before the State and Federal Commissions must be in separate stages. Section 13(3) allows joint hearings and the usual procedure in suburban fare cases is to make application before both commissions and have a joint hearing with the same evidence being presented to the two commissions at the same time. A joint hearing was the procedure adopted in *State of Illinois* v. *United States*, 101 F. Supp. 36, aff'd 342 U. S. 930. It is the procedure which has been followed in other suburban fare cases and was recently followed in *In the Matter of Illinois Central Suburban Fares*, I. C. C. Docket 31955, 300 I. C. C. 53, (1957) and Ill. C. C. Docket 43175 and *Commutation Fares, Chicago, North Shore and Milwaukee Railway*, I. C. C. Docket 32043 (1957) and Ill. C. C. Docket 43625. The situation involved in the instant matter was ideal for a joint hearing since the railroad sought an adjustment in both intra and the two inter state suburban fares at the same time. Even the Interstate Commission in its report commented upon the departure from the usual procedure of filing petitions with both commissions, "so that like cooperative action could be taken." (297 I. C. C. at page 355, R. 30.)

IV.

THE ORDER OF THE COMMISSION CREATES A DISCRIMINATION AGAINST INTRASTATE COMMERCE INSTEAD OF REMOVING A DISCRIMINATION AGAINST INTERSTATE COMMERCE.

Section 13(4) allows the removal of undue preference between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and the removal of undue discrimination against interstate commerce. It does not authorize interstate preferences nor discrimination against intrastate commerce. The order of the Commission actually results in such a preference and discrimination.

We have heretofore shown that there is no revenue discrimination against interstate commerce. Proportionately the intrastate fares were contributing more than their fair share. In the absence of any other revenue figures, the only comparison which can be made is between the passenger deficits and the freight net earnings. The Interstate Commission's report showed that the Railroad suffered a deficit from passenger operations of approximately $23,000,000. The suburban operation did not contribute more than $1,200,000 to that deficit even on a fully distributed basis (R. 384) leaving an interstate passenger deficit of approximately $21,800,000. The report further shows that the Railroad earned from its freight operations over $37,000,000, but does not show how much of that income is attributable to Illinois intrastate freight. If the Illinois intrastate freight contributed only 5½% of the total, such intrastate freight would more than off-set the suburban passenger deficit to a greater proportion than the interstate freight provides for the interstate passenger service.

Also, as we have pointed out, the intrastate one-way and round-trip fares were already as high or higher than the corresponding interstate fares (R. 350), and the prescribed one-way fares on a 3¢ per mile basis with 25¢

minimum is considerably higher than the present interstate fares at 2½¢ per mile and 15¢ minimum (R. 29).

The fact that commutation fares for the longer hauls in the suburban territory results in a lower rate per mile than through passenger fares[23] actually works a further preference in favor of interstate and prejudice against intrastate commerce. Because of such lower cents per mile basis on the longer haul, the interstate commutation fares of Zenda and Walworth are on a lower per mile basis than the intrastate fares. Consequently, no matter how you compare the intra and inter state fares, either on a one-way and round-trip basis or on a commutation basis, the interstate rates are lower than the intrastate.

While a state should not enjoy the earnings from interstate commerce to support intrastate commerce, the state should only be called upon to furnish compensation "for the intrastate business reasonably proportionate to that for the interstate business". *Wisconsin Railway Comm.* v. *Chicago, B. & Q. R. R. Co.*, 257 U. S. 563, 589. In this case, there is even lacking the ordinary "disparity of rates".

Nor is a reversal of the District Court justified because an affirmance will require a refund to be made.[24] This Court should not be called upon to approve fare increases —whether intrastate or interstate—on the proposition that to disapprove will require refunds from rates which did not produce a profit for the paying of such refunds.

Nor is it an answer to say as the Milwaukee urges, that the suburban passenger will not be hurt by requiring him to pay the same fares as charged by other railroads. Rate making can not be put on such a simplified basis. Also, such a policy would apply to both sides of the street so that

23. A fact which the Appellant Railroad (its brief in No. 12, page 26) seems to think aids their showing of discrimination against interstate commerce.

24. Appellant Railroad states that such refund will come from other earnings (its brief in No. 12, page 27). This is not so, as the refund is only from the impounded increased suburban fares.

lower fares could equally be prescribed upon the same theory.

V.

THERE IS NO INDEPENDENT BASIS FOR ESTABLISHING THE TWO INTERSTATE FARES AND THE DISTRICT COURT ACTED PROPERLY IN SETTING THEM ASIDE.

It may be questioned whether the decree of the District Court actually enjoins and sets aside the two interstate rates of Zenda and Walworth.[25] However, upon the basis of the record and report of the Interstate Commission the fares prescribed for Zenda and Walworth have no independent basis for surviving the stricken intrastate fares. The only finding of justification for the reasonableness of the two interstate fares was upon "the same bases as herein prescribed for intrastate application" (Finding 5, R. 37). Obviously, if the basis for the establishment of the intrastate fares falls, so also the basis for the two incidental interstate fares.

CONCLUSION.

We therefore respectfully submit that the decree of the District Court entered on June 14, 1956 should be affirmed.

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25. See our Motion to Affirm in Nos. 502 and 503, October Term 1956, pages 8 and 9. Such issue will be raised directly if this court sustains the District Court and refunds are sought by Zenda and Walworth passengers.

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Supreme Court of the United States

OCTOBER TERM, 1957.

Nos. 12, 27 and 28 Consolidated.

No. 12.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, *Appellant*,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Appellees.*

No. 27.

UNITED STATES OF AMERICA, *Appellant*,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Appellees.*

No. 28.

INTERSTATE COMMERCE COMMISSION, *Appellant*,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Appellees.*

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEE, MILWAUKEE ROAD COMMUTERS' ASSOCIATION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

Nos. 12, 27 and 28 Consolidated.

No. 12.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

No. 27.

UNITED STATES OF AMERICA,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

No. 28.

INTERSTATE COMMERCE COMMISSION,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEE, MILWAUKEE ROAD COMMUTERS' ASSOCIATION.

PRELIMINARY STATEMENT.

These cases arise on separate appeals by Chicago, Milwaukee, St. Paul & Pacific Railroad Company (herein called "the Milwaukee Road"), the United States of America, and the Interstate Commerce Commission, from the decree of a three-judge District Court rendered on June 14, 1956 (R. 470-1).

The decree appealed from set aside and enjoined the enforcement of an order of the Interstate Commerce Commission authorizing and directing an increase in suburban passenger fares on the Milwaukee Road (Decree, R. 470-1; Opinion, R. 460-70, reported 146 Fed. Sup. 195).

The suburban lines to which the proceeding relates are the "West Line" of the Milwaukee Road operating between Chicago and Elgin, Illinois; and the "North Line" operating between Chicago and Fox Lake, Illinois, with one suburban train operating daily on the North Line in each direction beyond Fox Lake, Illinois, to the villages of Zenda and Walworth, Wisconsin.

All the fares involved are Illinois intrastate fares except the fares to Zenda and Walworth, Wisconsin.

The proceeding before the Interstate Commerce Commission arose on a petition of the Milwaukee Road, asking the Commission to conduct an investigation under Section 13(4) of the Interstate Commerce Act, to ascertain whether the intrastate fares, as established by the Illinois Commerce Commission, caused "undue, unreasonable or unjust discrimination" against interstate commerce. The interstate fares to the two Wisconsin villages were involved only because those fares must necessarily be fixed to

accord with the fares to the intervening Illinois suburban stations on the suburban line.

The District Court held that the order of the Interstate Commission finding that there was such discrimination, and authorizing an increase in the suburban fares involved, was not supported by the evidence or by the Commission's findings. The District Court therefore held that the order was beyond the authority of the Commission under the law and was invalid.

The ultimate question involved is whether the District Court was correct in so holding.

THE QUESTIONS PRESENTED.

The questions presented and the circumstances under which they arise are as follows:

1.

The Interstate Commerce Commission in this case established the suburban fares of the Milwaukee Road on the basis of what it determined the market would bear, without comparing the contribution to revenue made by the intrastate and interstate business.

The District Court held that the finding of the Commission that the intrastate rates caused undue, unjust and unreasonable discrimination against interstate commerce was not supported where there were no subordinate findings nor evidence in the record as to what contribution from suburban traffic would constitute a fair proportion of the Milwaukee Road's total income (R. 465).

The question is presented as to whether this holding of the District Court is correct.

2.

As a corollary to the question last-stated, the question is also presented as to whether or not there can be any finding that a rate of fare fixed by state authority discriminates unduly, unjustly or unreasonably against interstate commerce where, as here, there is no evidence that the intrastate rate attacked is lower than rates for similar service in interstate commerce.

3.

The increased rates for suburban fares on the Milwaukee Road were fixed by the Interstate Commission so as to equal the rates of the suburban fares in effect on the Chicago & North Western Railway. The Commission found (Fdg. 4, R. 37) that the increase in suburban fares, thus fixed by the Commission, will be "just and reasonable for the future.".

The District Court held (R. 467-9) that the last-mentioned finding and the increase in rates based thereon could not stand because: (a) not only was there no evidence offered showing similarity of equipment, service or operating conditions between the Milwaukee Road and the North Western, but the record, in fact, shows that the lines are not comparable; (b) there is no evidence to support the finding that the rates prescribed for the Milwaukee Road are "just and reasonable"; and (c) a carrier cannot justify unreasonably high rates on intrastate business on the ground that only in that way is it able to meet losses on its interstate business.

The question is presented as to whether this last-mentioned holding of the District Court is correct.

4.

The Section 13(4) proceeding was instituted by the Milwaukee Road after the conclusion of a proceeding before the Illinois Commission, in which the Milwaukee Road asked for authority to increase the rates here involved.

The hearing before the Illinois Commission showed that large savings would result if the Milwaukee Road shifted from steam to diesel operation of its suburban service. Using the cost figures submitted by the railroad itself, adjusted to reflect the estimated savings from shifting to diesel, the Illinois Commission denied the increase.

A few months after the decision of the Illinois Commission, the Milwaukee Road filed its petition with the Interstate Commission under Section 13(4), claiming that the rates thus fixed by the Illinois Commission in the hearing last referred to caused "undue, unreasonable and unjust discrimination" against interstate commerce (R. 25).

In presenting its case to the Interstate Commission, the Milwaukee Road used a different accounting theory from that presented to the Illinois Commission and included, as out-of-pocket costs, depreciation of equipment and charges for maintenance of way, not included, and expressly disclaimed as out-of-pocket expenses, in the proceeding before the Illinois Commission (R. 401-410; 274).

The District Court held that in this case the need for federal power to nullify state rates does not clearly appear and hence that the proceeding before the Interstate Commission under Section 13(4) could not be maintained, that the State Commission should first have been given a chance to fix fares on the evidence and basis presented to the Interstate Commission (R. 469-470).

The question is presented as to whether these last-mentioned holdings of the District Court are correct.

5.

The Interstate Commission, in its report, fixed the interstate suburban fares on the two trains to and from Zenda and Walworth, Wisconsin, "on the same basis as herein prescribed for intrastate application" (Fdg. 5, R. 37). No separate consideration was given to interstate fares. They were fixed to conform to the fares fixed for the intervening intrastate stations, and had no independent status.

The decree of the District Court adjudged the entire orders of the Interstate Commission increasing suburban fares to be invalid. The decree thus applied both to the

intrastate fares and to the interstate fares to Zenda and Walworth, Wisconsin (R. 471).

The question is presented as to whether the District Court erred in setting aside the Interstate Commission's order as to the interstate fares involved.

If the decision of the District Court on any one of the first four questions above enumerated is correct, then the decree appealed from must be affirmed.

STATEMENT OF THE CASE.

The Proceeding Before the Interstate Commerce Commission.

The proceeding before the Interstate Commerce Commission in which the order set aside by the District Court was entered, was instituted by petition of the Milwaukee Road.

The petition (R. 24) asked that the Interstate Commission conduct an investigation, under Section 13 of the Interstate Commerce Act, as to the effect on interstate commerce of the intrastate suburban fares in the Chicago area as fixed by the State Commission (R. 26-7).

The petition alleged that the Milwaukee Road, in October, 1952, had filed an application with the Illinois Commission asking for authority to increase suburban fares, and that the Illinois Commission had denied that application. The petition alleges in effect that the Illinois Commission conducted the hearings unfairly and so as to cause undue, unreasonable and unjust discrimination against interstate commerce (R. 24-25).

The petition asks (R. 27):

1. That the Interstate Commission find that the "intrastate coach fares within the Chicago suburban area made or imposed by authority of the State of Illinois cause, and will continue to cause, disadvantage to and undue, unreasonable and unjust discrimination against interstate commerce" in violation of Sections 3(1) and 13(4) of the Interstate Commerce Act; and

2. That the intrastate fares be increased, and that "like increases" be made in the interstate suburban fares to Walworth and Zenda.

The Interstate Commerce Commission, although it found that the out-of-pocket loss of the Chicago suburban operation was less than half the amount claimed by the Milwaukee Road, entered an order (R. 41) prescribing increased suburban fares estimated in the Commission's report (R. 34) to yield additional revenue of $383,000 per year. The Interstate Commission found (R. 34) that this additional revenue would be sufficient to eliminate an out-of-pocket loss in the suburban passenger service of $306,000 (which includes as a so-called out-of-pocket expense, $258,172 of depreciation and maintenance-of-way expense allocated to the suburban traffic), and to leave a balance of $77,000 to contribute to general overhead expense.

The Interstate Commission entered its order under Section 13(4) of the Interstate Commerce Act which gives the Commission power to fix intrastate fares where the fares fixed by state authority are found to have caused "undue, unreasonable, or unjust discrimination against interstate or foreign commerce."

The Interstate Commission made the following ultimate findings and conclusions on which its order is based (R. 36-7):

> "1. That respondent's [Milwaukee Road's] present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.
>
> 2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of Section 13(4) of the Interstate Commerce Act.
>
> 3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing

for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same bases as herein prescribed for intrastate application will be just and reasonable for the future."

The Interstate Commission's order rests, therefore, upon the following propositions:

That the existing fares, as fixed by the State authority, cause undue, unreasonable and unjust discrimination against interstate commerce;

That the prescribed fares are necessary so that travel thereunder may make a fair contribution toward the Milwaukee Road's indirect costs and return on investment; and

That the prescribed fares will be "just and reasonable for the future".

Absence of Evidence of Discrimination.

There is no evidence in the record to show that the intrastate rates of fare are discriminatory as compared with the interstate passenger rates.

The Milwaukee Road introduced no evidence to show that existing intrastate passenger rates were lower than interstate rates for similar service.

The only evidence in the record as to interstate passen-

ger fares is a tabulation read into evidence by the present appellees showing certain interstate fares to be as follows: (R. 349-350)

From Chicago to:	Distance— Miles	Fare Cents per Mile
Walworth, Wis.	73	2.52
Sturtevant, Wis.	62	2.53
Milwaukee, Wis.	85	2.49
Janesville, Wis.	99	2.30
Madison, Wis.	140	2.32
Minneapolis, Minn.	421	2.42

NOTE: Walworth Wisconsin is on the north suburban line just beyond Fox Lake, and its fares are grouped with the Illinois intrastate fares to the intervening suburban stations. This is not true of the other interstate fares listed.

The comparable intrastate rate of fare as heretofore fixed by state authority ~~2.5~~ 1.5 cents per mile (R. 350), which, as the tabulation shows and the report of the Interstate Commission finds is substantially the same as the comparable interstate rate (R. 29).

The order of the Interstate Commission raises the intrastate rates (and the related suburban interstate rates to Zenda and Walworth, Wisconsin) to 3 or more cents per mile (R. 39). If that order goes into effect, admittedly the intrastate rates of fare will be higher than comparable interstate rates.

There is thus no evidence in the record to show that the existing intrastate fares, as fixed by the Illinois Commission, cause any discrimination against interstate commerce —certainly no evidence of the "undue, unreasonable or unjust" discrimination required to give the Interstate Commission jurisdiction.

FAILURE OF THE RECORD TO SHOW WHAT WOULD CONSTITUTE A FAIR PROPORTIONATE CONTRIBUTION BY THE MILWAUKEE ROAD'S SUBURBAN SERVICE TO THE TOTAL SYSTEM INCOME.

The District Court held:

That the finding of the Interstate Commission that the increased intrastate fares prescribed by it are necessary "so that travel thereunder may make a fair contribution" toward the Milwaukee Road's "indirect costs and return on investment," is not sufficient to sustain the Commission's order; and

That in order to give the Interstate Commission jurisdiction to determine intrastate fares, there must be evidence and supporting findings to show what contribution from the intrastate traffic would constitute a fair proportion of the railroad's total revenue.

There is no such evidence and no such supporting findings.

The relative contributions of the interstate and the intrastate passenger services to system income are not in evidence. There is no basis in the record for a finding, and there is no finding, as to what would be a fair proportionate contribution by the intrasfate passenger service.

ABSENCE OF EVIDENCE TO SUPPORT THE FINDING THAT THE INCREASED INTRASTATE FARES AUTHORIZED BY THE INTERSTATE COMMISSION ORDER WOULD BE JUST AND REASONABLE.

The order of the Interstate Commission directed that the Milwaukee Road suburban fares be increased to the current level of the suburban fares on the Chicago & North Western Railway and the Commission found that the amount of increase will be just and reasonable. That finding is essential to the validity of the order.

The finding rests on testimony of the Assistant General Passenger Agent of the Milwaukee Road, as set forth in the following colloquy (R. 179-180):

> "Exam. Fuller: Well, so far as the nature of the suburban communities you serve and the nature of your line—you have two lines. The North Western has three, I understand. Your territory is pretty similar.
>
> "The Witness: Well, in what respect, sir? You mean geographically or in operation, or what?
>
> "Exam. Fuller: I am just talking about the nature of the suburban community.
>
> "The Witness: Yes, you could probably say there is strong similarity.
>
> "Exam. Fuller: That is all I have. Are there any other questions now?"

Immediately following the foregoing testimony, the attorney for the Milwaukee Road said (R. 180):

> "May I make a comment here, Mr. Examiner * * *. We do not offer these North Western fares as criteria of what fares should be. These exhibits [showing comparison with North Western fares] are offered solely in response to the Examiner's request."

There is no evidence in the record to show similarity in operating conditions of the Milwaukee Road and the North Western Railway. On the contrary, the evidence shows that the lines are not comparable.

The suburban fares of the North Western were fixed to cover an operation that employed 72 steam locomotives and only three diesels (R. 347) as compared with the present complete diesel operation on the Milwaukee Road.

The comparison of the cost of the Milwaukee Road suburban operation by steam locomotives with that by diesel locomotives shows that the diesel operation costs the Milwaukee Road $900,000 per year less than a steam operation (See tabulation, p. 16, *post*).

The fact that rates fixed for the North Western Railway would not apply to operation with diesel engines was noted by the Commission when those rates were fixed (*Commutation and Multiple Fares Between Illinois and Wisconsin*, 288 I.C.C. 15). The Interstate Commission has also noted the fact that the Milwaukee Division of the North Western Railway which includes one of the North Western suburban lines, carries no freight whatever. (*Commutation Fares between Chicago and Wisconsin*, 279 I.C.C. 773, 777).

The only other suburban lines in the Chicago area using diesel locomotives are those of the Burlington and the Rock Island. The evidence showed that the suburban passenger fares of both those railroads were substantially the same as the fares in force on the Milwaukee Road at the time it petitioned the Interstate Commerce Commission for an increase (Pro. Ex. 26; R. 420; 287). No effect was given to that evidence (R. 34-5).

There is thus no evidence in the record to support the finding that the increased fares prescribed by the Interstate Commission are just and reasonable.

The Proceeding Before the Illinois Commerce Commission.

The order of the Illinois Commerce Commission, denying the Milwaukee Road's petition for an increase in suburban fares, is the basis of the claim of "unjust and unreasonable discrimination" by state authority against interstate commerce. A short statement as to the proceeding before the Illinois Commission is therefore called for.

The intrastate rates which the Interstate Commission in its order finds are unreasonably and unjustly discriminatory against interstate commerce, were continued in effect by the Illinois Commission in its order entered November 10, 1954. By that order the Illinois Commission,

after extensive hearings and a most thorough investigation, denied the petition of the Milwaukee Road for increase in rates and discontinuance of off-peak suburban trains (R. 92).

In the case before the Illinois Commission, the Milwaukee Road claimed an out-of-pocket deficit in Chicago suburban operation of $1,260,000, exclusive of depreciation and maintenance of way, which the Milwaukee Road then stated should not be considered as out-of-pocket expense.

At that time the suburban trains of the Milwaukee Road were operated wholly by steam locomotives.

The Illinois Commission found that the operating expenses of the Milwaukee Road were grossly overstated and furthermore, that according to the evidence, a substitution of diesel for steam locomotives would result in an annual saving in expenses of approximately $1,000,000 (R. 80, 82).

After the evidence had been introduced showing the saving that would result from dieselization, but before the order of the Illinois Commission was enforced, ENTERED the Milwaukee Road began the substitution of diesel for steam locomotives on its suburban trains. The dieselization of the suburban service was completed about September, 1954 (R. 137).

Despite the fact that full economies were not immediately realized, it is indicated by income statements for the last quarter of 1954 that the yearly savings on the suburban service from substitution of diesel for steam operation will be close to the $1,000,000 estimate above referred to. This is shown by the following tabulation:

COMPARISON OF SUBURBAN PASSENGER OUT-OF-POCKET EXPENSES (EXCLUSIVE OF UNION STATION EXPENSE) OF STEAM OPERATION ON 1952 BASIS WITH LIKE EXPENSE OF DIESEL OPERATION ON BASIS OF LAST FOUR MONTHS OF 1954.

	Out-of-Pocket Expenses	
	1952	1954
	Steam Operation	Expense as found by Interstate Commission on Basis of 4-month Diesel Operation Adjusted to Exclude Accounts Not Included in Figures Presented to the Illinois Commission
Total passenger operating expenses (including payroll taxes); excluding head end expenses—Ex. 21 (R. 395-400)	$2,616,196*	$1,847,006*
Savings in 1954		$ 769,190
Adjustment for increase in Wage Rate in 1954		
Estimated cost of labor in 1954 (⅔ total cost—(R. 147) $1,333,863)		
Increase over cost at 1952 Wage Rates, estimated at 6⅔% (Pet. Ex. 15, R. 392. 350		$ 82,171
Estimated savings from Diesel Operation after Adjustment for Higher Wage Rate		$ 851,361**

NOTES: * These figures are from Pro. Ex. 34 (R. 428-9; 345) adjusted to exclude "head end" expense.

** If increases in material prices are taken into consideration and allowance is made for the use of some steam locomotives during part of the 4-month period, the savings would considerably exceed $900,000.

Despite the statement to the contrary in the Milwaukee Road's brief (p. 4), the estimates of the Illinois Commission as to the savings from diesel operation are thus in substantial accord with the savings experienced—if we omit the depreciation and maintenance-of-way items, which were not submitted to the Illinois Commission, and if we make the further necessary adjustments noted in the foregoing tabulation.

The findings of the Interstate Commission in the present proceeding further show the propriety of the Illinois Commission's estimate that there would be little if any out-of-pocket loss after dieselization.

In the case before the Interstate Commission, the Milwaukee Road included in its out-of-pocket cost the charges for depreciation of equipment and maintenance of right-of-way used by both through and suburban trains, which were expressly excluded from out-of-pocket expenses in the case presented to the Illinois Commission.

If those charges are eliminated from the figures presented to the Interstate Commission, the $306,038 out-of-pocket loss found by the Interstate Commission to have been incurred in the suburban service in 1954 (R. 34) would be reduced by $258,172, leaving an apparent out-of-pocket deficit of $47,866. This would be reduced to $21,056 if effect is given to the increase in revenue experienced in the last four months of 1954, during all but two weeks of which the service had been dieselized.

The adjustments indicated are shown by the following tabulation:

OUT-OF-POCKET OPERATING STATEMENT FOR 1954

As Found By Interstate Commerce Commission (R. 34)		
Revenue (Actual for year)		$1,799,140*
Expenses (on basis of last 4 months, except actual for year for maintenance of way)	$2,269,404	
Less credit for non-revenue passengers	164,226	2,105,178
Out-of-pocket Deficit as found by Commission		($ 306,038)
As Adjusted to the Basis Presented to Illinois Commerce Commission		
Revenue (Actual for year)		$1,799,140
Expenses	$2,105,178	
Adjustments—expenses included by Interstate Com. Com. not claimed by Milwaukee Road in Ill. Com. Com. Case (less 3.2% to conform with the Int. C. C. elimination of head end expense):		
Depreciation (R. 32)	$188,764	
Maintenance of way (Ex. 34; R. 431, 345)	69,408	
Total adjustment	258,172	
Expenses as adjusted to basis presented to Ill. Com. Com.		1,847,006
Deficit for 1954 adjusted to basis presented to Ill. Com. Com.		($ 47,866)*

NOTE: * If revenues are adjusted to reflect the increase in the last four months of 1954 (Pet. Ex. 13A; R. 384; 137), the annual deficit would be $21,056. Further adjustments in expense items to allow for partial use of steam engines and non-suburban diesels during the base period would probably eliminate this deficit.

In the brief of the Milwaukee Road there is also criticism of the rejection by the Illinois Commission of an item of $290,000, claimed by the Milwaukee Road as part of the Union Station expense attributable to suburban operation. In rejecting that item, the Illinois Commission acted in accordance with a formula approved in the report of the Interstate Commission and followed by it in this case. The Union Station expense, as found by the Illinois Commission, is the same as that found by the Interstate Commis-

sion except for the inclusion by the Interstate Commission of an item of depreciation amounting to $27,563 (Rec. 33-4).

The finding of the Illinois Commission that, on the case presented to it, the fares theretofore established would not result in an out-of-pocket loss, is thus supported by the actual experience of the Milwaukee Road under diesel operation.

The report of the Interstate Commission also finds, that the order of the Illinois Commission was sustained by the case presented to it. As to this, the Interstate Commission's report states (R. 31) that the order of the Illinois Commission was "based on respondent's [the Milwaukee Road's] own showing modified to reflect the change in its suburban operations."

The Interstate Commission's report contains no statement or finding indicating that the Illinois Commission acted unfairly. On the contrary, the Interstate Commission's report clearly indicates that any need for changing the rates fixed by the Illinois Commission results from the failure of the Milwaukee Road to present the case to the Illinois Commission on the same basis as that on which the case was presented to the Interstate Commission.

As to this, the Interstate Commission's report states (R. 32-3):

> "* * * protestants' [this appellee's] lower figures are accounted for by elimination of any allowance for depreciation and of certain accounts for maintenance-of-way not included in respondent's [the Milwaukee Road's] study before the Illinois Commission.
>
> * * * * * *
>
> Respondent's explanation for the prior omission [*i.e.*, the omission of depreciation and maintenance-of-way accounts in its presentation to the Illinois Com-

> mission] was its impression that even without them, it had shown considerable deficit from this service. This explains, but does not excuse, its incomplete showing before the Illinois Commission."

Furthermore, as a direct result of the investigation made and the expert evidence adduced before the Commission in that proceeding, dieselization of the suburban service of the Milwaukee Road was brought about with great benefit to the Road and to the travelling public served by it.

The Decision of the District Court.

The decree of the District Court (R. 470-1) set aside the order of the Interstate Commission, enjoined its enforcement, and remanded the case to the Interstate Commission for further proceedings conforming to the Court's opinion.

The grounds upon which the decree rested, as stated in the Court's opinion, are as follows (R. 460-471):

1. The Interstate Commission states (R. 34, 37) that the intrastate rates which it approves "would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes of approximately $77,000 annually," and that those fares "will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment * * *." But there is no finding (and, in fact, no evidence) to show what a "fair contribution" would be. As the District Court states (R. 464, 465):

> "* * * at no place does the commission make any findings as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income. In fact, the interstate commission makes no finding as to what the Milwaukee Road's total income was for the year in question, and likewise no finding as to what would be a fair propor-

tionate share of total income of the road which the intrastate traffic now under consideration should contribute.

* * * * *

Nor is it sufficient that the interstate commission found that, to the extent that the suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it discriminates against its freight operations. This finding is no substitute for one as to what it should contribute as a fair proportionate share of the railroad's total income. Without the latter finding the order of the interstate commission cannot stand."

2. Furthermore, there is nothing in the evidence or in the report of the Interstate Commission that indicates the extent of the obligation of the suburban service to make a contribution to the indirect costs and taxes. As to this, the District Court states (R. 467):

"* * * we are here confronted with the imposition of an involuntary contribution being exacted by legal means. To be sustained, it must be based upon a finding of the extent of the obligation. It cannot be supported by a vague reference to an unascertained amount of 'indirect costs and taxes' or what the suburban service can reasonably contribute to the Milwaukee Road's 'indirect costs,' or 'a fair contribution toward respondent's indirect costs and return on investment.'"

3. There is no sufficient evidence to support the finding that the intrastate fares prescribed by the order are, or will be, just and reasonable for the future. As the District Court states (R. 467, 468-9):

"This finding rests on an averment in the report that the comparison with the fares of the Chicago and North Western Railway Company is more persuasive, as, in the words of respondent's traffic witness, 'there is a strong similarity between the suburban territory

served by the Milwaukee Road and that served by the North Western, * * *.' The evidence * * * does not support this averment * * *. There was no evidence offered showing similarity of equipment, service or operating conditions. * * * Without sufficient evidence of comparability of operation, there is no ground for fixing the Milwaukee Road's fares at the North Western level, or for finding that the resulting fares are just and reasonable."

4. The authority of the Interstate Commission to nullify the action of a State Commission (which has primary jurisdiction) in fixing or passing upon intrastate fares, arises only when the evidence shows that the State Commission's action was unduly, unjustly or unreasonably discriminatory against interstate commerce. That was not shown in this case. As the District Court states (R. 469-470):

> "In the state commission proceeding, which was initiated by the Milwaukee Road, the latter showed in its exhibits that the depreciation of locomotives and coaches was not included in the out-of-pocket cost. Likewise, in its exhibits in that case it did not include in out-of-pocket expense certain maintenance of way accounts involving maintenance of facilities, such as roadbed, etc. The comments in the interstate commission's report, in regard to these items, show that they were by the Milwaukee Road deliberately removed from the consideration of the state commission. It follows that facts presented by Milwaukee Road to and relied upon by the interstate commission to support its finding as to an out-of-pocket suburban deficit, were not presented to nor relied on by the Milwaukee Road in the state commission proceeding. If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.
>
> In *North Carolina* v. *United States*, 325 U. S. 507, at 511, the court said: 'Since the enactment of Section 13(4), as before its enactment, a state's power over

intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate.'

Where a railroad seeks the fixing of higher intrastate rates by the interstate commission after failing in such endeavor before a state commission, Section 13(4) does not contemplate that the state commission is to be considered only a way station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us."

SUMMARY OF ARGUMENT.

We contend that the order of the District Court, setting aside the order of the Interstate Commerce Commission fixing the Milwaukee Road's suburban fares, should be affirmed for the following reasons:

I.

The Interstate Commerce Commission has no jurisdiction to pass on or to increase the intrastate passenger rates of the Milwaukee Road involved in this case, unless it clearly appears that the existing rates as fixed by the Illinois Commission result in discrimination against interstate commerce.

The Interstate Commission has no power to pass on, or to increase, intrastate fares on the ground that they do not produce sufficient revenue. That is a matter wholly for the state authorities.

Section 15a of the Interstate Commerce Act gives the Interstate Commission power to fix *interstate* rates on the basis of revenue, so that they may render a fair return. But that power is confined to rates for interstate traffic. Section 1(2)(a) of the Act provides that none of the provisions of the Interstate Commerce Act shall apply to transportation of passengers wholly within a state, and thus expressly excludes the application of Section 15a to intrastate passenger fares.

The power of the state authorities over intrastate fares is exclusive, up to the point where it clearly appears that the Interstate Commission has jurisdiction to intervene under Section 13(4) of the Interstate Commerce Act.

Section 13(4) operates as an exception to Section 1(2)(a), above referred to, and empowers the Interstate Commission to intervene and to increase intrastate fares fixed by State authority where it appears either: (1) that such fares cause undue or unreasonable advantage or prejudice as between persons or localities in intrastate and interstate commerce; or (2) where such fares as fixed by State authority cause undue, unreasonable or unjust discrimination against interstate or foreign commerce.

There is no claim here that the intrastate rates attacked cause advantage or prejudice as between persons or localities.

The Milwaukee Road rests its case on the assertion that the existing intrastate rates cause undue, unjust and unreasonable discrimination against interstate commerce.

The necessity to show the existence of discrimination—whatever its character—is thus the basic element of this case.

II.

There is no showing in this case of discrimination against interstate commerce because:

(a) There is no evidence to show that the rates of fare charged in the Milwaukee Road's intrastate passenger service are less than the rates charged for similar service in interstate commerce; and

(b) There is no evidence or finding as to what revenue is required from the suburban passenger traffic in order to constitute a fair proportionate contribution to the Milwaukee Road's total income.

A.

Discrimination against interstate commerce is not shown to exist unless it appears that the rates of fare charged for intrastate passenger service are lower than rates

charged for similar service in interstate traffic. If such differential is not shown, then there is no showing of discrimination against interstate commerce that would justify intervention by the Interstate Commission under Section 13(4).

There was no such showing in this case. On the contrary, the evidence shows that the intrastate rates of fare, for passenger service, as fixed by the Illinois Commission, are higher than comparable rates in interstate commerce.

B.

The report of the Interstate Commission rests on a finding that the increased intrastate fares prescribed by that Commission will produce "substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's [the Milwaukee Road's] indirect costs and return on investment." That finding does not show discrimination against intrastate commerce and will not sustain the Commission's order in the absence of evidence and a supporting finding showing what would constitute a fair proportionate contribution from the intrastate passenger service to the total system revenue as compared with like contributions from other parts of the system.

There is no such evidence or supporting finding.

III.

The report of the Interstate Commission finds that the increased intrastate rates of fare, prescribed thereby will be "just and reasonable for the future."

This is a necessary finding, but it cannot stand unless there is evidence to support it. There is no such evidence.

The finding rests on a comparison of the rates fixed by the Interstate Commission's order for the Milwaukee

Road's suburban service with the rates in effect in the suburban service of the Chicago & North Western. That comparison does not support the finding. There is no evidence of similarity between the suburban operation of the Milwaukee Road and that of the North Western. On the contrary, the evidence shows dissimilarity; and the order of the Commission fixing the suburban rates of the North Western expressly stated that the rates so fixed would not apply to diesel operation (see pp. ~~43~~ to ~~47~~, ~~above~~). 45 46 BELOW

IV.

The existing intrastate passenger rates of the Milwaukee Road were fixed by the Illinois Commission, by order entered November 10, 1954, in the proceeding summarized at pages 14 to 20, above.

The Interstate Commission has no jurisdiction under Section 13(4) to intervene and nullify the order of the Illinois Commission unless it is clearly shown that that order caused an undue, unreasonable, or unjust discrimination against interstate commerce.

There is no such showing.

The order of the Illinois Commission and the rates of fare fixed thereby were just and reasonable on the evidence and theory of accounting adopted by the Milwaukee Road in presenting the case to that Commission.

There is thus no basis for a charge that the order of the Illinois Commission was unfair or caused "undue, unreasonable or unjust" discrimination against interstate commerce.

If the Milwaukee Road wished to present its case on a different theory of accounting, and on a different evidence as to its costs, it should have gone again to the Illinois Commission, which has primary jurisdiction over intrastate rates.

V.

The increase in the interstate fares between Chicago, Illinois, and Zenda and Walworth, Wisconsin, prescribed in the order of the Interstate Commission, rested wholly upon the increases made in the intrastate fares to the intervening Illinois stations and depended for its validity on the validity of the increases in the intrastate fares to those stations. It follows that if the increased intrastate rates are invalid, the increased interstate rates to the Wisconsin villages must also fall. The District Court, therefore, properly set aside the order relating to the fares to Zenda and Walworth, Wisconsin.

ARGUMENT.

I.

THE INTERSTATE COMMERCE COMMISSION HAS NO JURISDICTION OVER INTRASTATE PASSENGER RATES UNLESS IT CLEARLY APPEARS THAT THE EXISTING RATES, AS FIXED BY THE ILLINOIS COMMERCE COMMISSION, RESULT IN DISCRIMINATION AGAINST INTERSTATE COMMERCE.

Primary jurisdiction over intrastate rates is in the state authorities. Rates fixed by a state commission cannot be overturned by the Interstate Commission unless and until justification for the exercise of Federal power clearly appears.

As said in *North Carolina* v. *United States*, 325 U. S. 507 (510-11):

> "Neither Section 13(4), nor any other Congressional legislation, indicates a purpose to attempt wholly to deprive the states of their primary authority to regulate intrastate rates. Since the enactment of Section 13(4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. * * * A scrupulous regard for maintaining the power of the state in this field has caused this Court to require that Interstate Commerce Commission orders giving precedence to federal rates must meet a high standard of certainty. Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear.'"

And in *Mississippi Public Service Commission* v. *United States*, 124 Fed. Supp. 809 (aff'd. 349 U. S. 908), the court set aside and enjoined enforcement of an order of the In-

terstate Commerce Commission purporting to fix intrastate rates under Section 13. The Court thus stated the principles governing the application of that section (p. 813):

> "The true rule is that, whenever the Commission attempts to exert the power to interfere with intrastate rates which are otherwise in the dominion of state regulation, the justification for the exercise of such power by the Commission must clearly appear of record. Otherwise, the Commission's action is a clear and unlawful encroachment upon the reserved power and authority of the state.
>
> In order to authorize the Commission to exercise the power to nullify intrastate rates under Section 13(4) of the Act, it must be shown, among other things, (a) that the intrastate rates involved are abnormally low and are not contributing their fair share of the revenue of the carriers involved; (b) that the disparity between the rates is substantial and operates as a real discrimination against and obstruction to interstate commerce; (c) that injury to interstate shippers has resulted and will continue to result because of the disparity in rates; (d) that the proposed rates are just and reasonable; and (e) that a substantial increase in the carriers' revenue will result from the proposed increase in the intrastate rates."

The Interstate Commission has no power to increase rates as fixed by state authority on the ground that those rates do not produce sufficient revenue. Unless there is a showing of discrimination, that is a matter solely for the State Commission.

Section 15(a) of the Interstate Commerce Act confers broad powers on the Interstate Commission to fix *interstate* rates on the basis of revenue so as to insure a fair return for the service rendered.

But the powers thus conferred do not extend to intrastate rates or permit interference by the Interstate Commission with the exercise by the State Commission of its paramount powers over those rates.

Section 1(2)(a) of the Interstate Commerce Act provides that the provisions of the Interstate Commerce Act "shall not apply to the transportation of persons or property * * * wholly within one state."

There is nothing in Section 15a that excepts it from the application of Section 1(2)(a).

As said in *Wisconsin RR. Commission* v. *C. B. & Q. RR. Co.*, 257 U. S. 563 (586):

> "Section 15a confers no power on Congress to deal with intrastate rates. What is done under that section is to be done by the [Interstate] Commission 'in the exercise of its power to prescribe just and reasonable rates,' i. e., powers derived from previous amendments to the Interstate Commerce Act which have never been construed or used to embrace the prescribing of intrastate rates."

The Court, in the *Wisconsin* case, then commented as follows on the effect of Section 13(4) as broadening the powers of the Interstate Commission (257 U. S., at p. 586):

> "When we turn to paragraph 4, Section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce', it is impossible to escape the dovetail relation between that provision and the purpose of Section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, or unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words."

The "purpose" of Section 15a, as originally enacted, and as amended, is to empower the Interstate Commission to fix interstate rates that will result in a fair return to the railroad and adequate service to the public. If rates are

fixed under Section 15(a) for interstate commerce, then under Section 13(4) (enacted at the same time as Section 15a), intrastate rates may be raised to the interstate levels so as to avoid the preference or discrimination against interstate commerce prohibited by Section 13(4).

That is the meaning of the reference in the *Wisconsin* case to the "dovetail relation" between Section 13(4) and Section 15a. But, as the Court clearly stated in that case, in the absence of a showing that the intrastate rates cause a preference or discrimination against interstate commerce the Interstate Commission has no power, under Section 15a or otherwise, to pass on or to increase the intrastate rates.

As said in the *Wisconsin* case, in order for the Interstate Commission to have authority to intervene and fix intrastate rates, it must appear that there is a "*disparity*," *i. e.*, an inequality, between intrastate and interstate rates, resulting in an "undue, unreasonable, or unjust discrimination" against interstate commerce.

Section 13(3) authorizes the Interstate Commission, on its own motion on petition of the carrier, to conduct an investigation (in cooperation with state authorities, if the Interstate Commission so elects) of any intrastate rate imposed by state authority. Section 13(4) provides that whenever, as a result of such investigation, the Interstate Commission finds that such rate imposed by state authority causes:

> (1) "Any undue, or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand;" or
>
> (2) "Any undue, unreasonable or unjust discrimination against interstate or foreign commerce,"

the Interstate Commission may intervene and prescribe a rate—or a maximum or minimum limitation thereon—

which "in its judgment will remove such advantage, preference, prejudice or discrimination."

The petition of the Milwaukee Road (R. 24-27), on which the proceeding before the Interstate Commission rests, made no claim that the intrastate passenger rates of fare complained of cause any advantage, preference or prejudice as between persons or locations. The petition rests wholly on the averment that the intrastate rates attacked cause "undue, unreasonable and unjust discrimination" against interstate commerce.

The basic question in the case is, therefore, whether or not any discrimination against interstate commerce has been shown to exist.

II.

There Is No Showing That the Intrastate Rates Attacked Discriminate Against Interstate Commerce, and the Interstate Commerce Commission Therefore Had No Jurisdiction Over the Intrastate Fares in Suit.

To sustain a finding that intrastate rates discriminate against interstate commerce, so as to confer jurisdiction over such rates on the Interstate Commission, it must appear from the evidence and supporting findings:

(a) That the intrastate rates complained of are lower than interstate rates for similar service; and

(b) That the contribution to total railroad income from the intrastate service in question is proportionately less than the corresponding contribution from interstate service.

Neither element is shown by the evidence or findings in this case.

A.

No Discrimination Against Interstate Commerce Was Shown Because It Did Not Appear That the Rates of Fare Charged in the Milwaukee Road's Intrastate Passenger Service Are Less Than the Rates Charged for Similar Service in Interstate Commerce.

"Discrimination" in the sense here used, is defined in Webster's International Dictionary, as follows:

> "A distinction, as in treatment, esp., an unfair or injurious distinction. Specif., arbitrary imposition of unequal tariffs for substantially the same service; a difference in treatment made between persons, localities, or classes of traffic, in respect of substantially the same service."

The discrimination against interstate commerce with which the Interstate Commission is authorized to deal by Section 13(3) and (4) is discrimination caused by intrastate rates or fares. Intrastate rates may cause discrimination against interstate commerce if they are lower than the comparable interstate rates.

The existence of such a difference is not alone enough to justify the Commission in finding discrimination against interstate commerce and ordering an increase in intrastate rates (*North Carolina* v. *United States*, 325 U. S. 507 (516); but the finding of lower intrastate rates is the first necessary step in justifying action by the Interstate Commission under Section 13(4).

In an extensive examination of the orders of the Interstate Commission, with respect to intrastate rates entered under the authority of Section 13(4)—nearly 100 orders—we have been unable until the present case to find one instance in which the Interstate Commission asserted the right, or assumed the power, to fix intrastate rates at a level higher than interstate rates for similar service.

Thus, in *King* v. *United States*, 344 U. S. 254 (268), the Court, in upholding the order of the Interstate Commission raising Florida freight rates to the same level as interstate freight rates, quoted with approval the finding of the Commission that

> "No intrastate rate or charge shall be increased so that it will exceed the lowest level of the corresponding rates or charges contemporaneously maintained generally on interstate traffic to and from Florida points * * *."

In the instant case, there were no findings as to the relationship between the intrastate and interstate rate structure.

The only evidence as to interstate passenger fares is the tabulation read in evidence by this appellee, and set forth at page 11, above which shows interstate passenger rates to be at the same level as comparable intrastate rates—before giving effect to the increases approved by the Interstate Commission. That tabulation was introduced in evidence over the objection of the Milwaukee Road that evidence as to interstate fares is "immaterial to the present case." (R. 349.)

But we do not have to look solely to the tabulation to show similarity in existing rates. The report of the Interstate Commission finds that before the increases granted, both intrastate and interstate passenger fares were fixed equally at 2.5 cents per mile (R. 29). The order of the Interstate Commission directs that the intrastate passenger rates be raised to 3 cents or more per mile (R. 34). Thus, if the order is permitted to go into effect, the intrastate rates will be higher than comparable interstate rates.

The report of the Interstate Commission seeks to justify this disparity by the following comment (R. 36):

> "The one-way and round-trip fares here approved for respondent's [the Milwaukee Road's] suburban

> area, like those approved for the North Western and the Illinois Central, will be at a higher rate per mile than the corresponding fares to and from its non-suburban points. However, as we said of the North Western, this will be offset by the fact that respondent's multiple and commutation fares for the longer hauls in the suburban area will be at a lower rate per mile than any of its non-suburban fares."

The foregoing statement—assuming it to be accurate—furnishes no justification for the increase of any intrastate rate to an amount beyond the rate charged for similar service in interstate commerce.

The fact that the rates per ride per mile on commutation or multiple ride tickets for long hauls in intrastate service are less than the single ride rates in interstate passenger service, does not justify fixing intrastate rates for shorter hauls at rates higher than those charged for similar service in interstate service.

The prior proceedings referred to in the Commission's report do not support the conclusion that the base rate for intrastate passenger service may be increased to an amount exceeding the corresponding rate in interstate commerce, merely because commutation or multiple fare rates are at a less rate per mile per ride.

Whatever may be the fact as to the relation between intrastate and interstate fares on the North Western (which does not appear of record), the statements of the Interstate Commission that one-way and round-trip fares for the Illinois Central were approved "at a higher rate per mile than the corresponding fares to and from its non-suburban points" is in error.

On the contrary, in the *Illinois Central* case, the Interstate Commission and the Court expressly disapproved an increase in single ride or round-trip rates because the ex-

isting rates were already as high, or higher, than interstate rates for similar service.

The Illinois Central rate proceeding was reviewed by the District Court and is reported in *Illinois* v. *United States*, 101 Fed. Supp. 36 (aff'd 342 U. S. 930).

In that case, the Illinois Central filed a petition under Section 13(4) asking the Interstate Commission to prescribe increased prices for round-trip and multiple fare tickets. The Commission allowed the increase in multiple fare tickets, but disapproved any increase in single-ride and round-trip rates which were already as much or more than corresponding rates in interstate commerce. As to single fare and round-trip rates the Commission's order contains the following finding, which was approved by the Court (101 Fed. Supp., at p. 45):

> "2. That in connection with its minimum and round-trip suburban fares petitioner has not shown any person-locality or revenue discrimination against interstate commerce."

The rates on multiple fare tickets were increased by increasing the ratios of the cost of those tickets to the single ride fares. The increased ratios as fixed for the Illinois Central are the same as those fixed by the Illinois Commission for the Milwaukee Road (R. 29).

We submit that in the absence of evidence to show that intrastate passenger rates are lower than comparable interstate rates, there was no basis for a finding of discrimination against intrastate commerce that would empower the Interstate Commerce Commission to intervene and to increase intrastate passenger rates theretofore fixed by state authority.

B.

No Discrimination Against Interstate Commerce Was Shown Because There Is No Evidence or Finding as to What Revenue Is Required from Suburban Passenger Traffic in Order to Determine What Constitutes a Fair Proportionate Contribution to the System Revenue of the Milwaukee Road.

Before the Interstate Commission can intervene and raise intrastate rates, it must be shown not only that there is a discrepancy between those rates and the interstate rates, but also what would be the amount of contribution from intrastate suburban traffic that would constitute a fair proportion of the total system revenue.

In holding a Section 13 order of the Interstate Commission invalid, this Court said:

> "The Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income."
>
> *North Carolina v. United States*, 325 U. S. 507, 516.

In the instant case, there was likewise no finding as to what the total revenue of the railroad was, or as to what contribution of revenue was made by the interstate traffic.

The finding on which the Interstate Commission rests, in its conclusion that the intrastate suburban rates discriminate against interstate commerce, is Finding 4 (R. 37), set forth at page 10, above.

In that finding the Interstate Commission merely concludes that the prescribed intrastate fares are "necessary so that the travel thereunder may make a fair contribution toward respondent's [the Milwaukee Road's] indirect costs and return on investment * * *."

That conclusion has nothing to rest on in the absence of

some showing in the record as to what contribution is made from other parts of the system.

The contention of the Interstate Commission that the requirement that there be a subsidiary finding as to what would constitute a fair proportionate contribution to the system is "hyper-technical", has no merit. The defect is one of substance, not of form.

In the briefs of both the Interstate Commission and the Milwaukee Road, it is asserted that the finding that the prescribed intrastate fares would make a fair contribution toward the Milwaukee Road's indirect costs, is sufficient without subordinate findings, or evidence, to show what would constitute a fair proportionate contribution from the intrastate passenger traffic.

An examination of the cases cited shows that they do not support that proposition.

In *King* v. *United States* (1952), 344 U. S. 254, the following finding was held sufficient to sustain an order of the Interstate Commission increasing intrastate freight rates:

> "The establishment of intrastate rates and charges increased sufficiently to equal the level herein approved will substantially increase respondent's revenues therefrom, and will constitute not more than a fair proportion of respondent's total income."

That finding was the result of numerous comparisons between intrastate and interstate traffic. The Court specifically drew attention to the fact that the finding of a fair proportionate contribution was backed up by a finding (p. 271) that:

> "The transportation conditions incident to the intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsula are somewhat less favorable than those (1) within southern territory and (2) between Florida and interstate points."

The Court continued (p. 272):

> "The Commission has applied to the Florida operations the same conclusion it reached as to the need for increased revenue on a national basis and has distributed the burden within Florida along the same lines it followed when estimating the revenues available in the southern territory from intrastate as well as interstate operations."

In *Florida* v. *United States* (1933), 292 U. S. 1, (10-11), it appears there were most extensive findings from which the relative contributions from the intrastate freight traffic in question and like traffic in interstate commerce could be ascertained.

In none of the other cases cited does there appear to have been an absence of evidence and findings sufficient to show what would constitute a fair proportionate contribution of revenue from the intrastate traffic in suit.

In the instant case, the Interstate Commission's order simply asserts that intrastate passenger fares should be fixed at the highest level the traffic will bear—irrespective of whether any like rule is applied to interstate rates.

No evidence was offered to show that interstate passenger traffic is making a contribution to revenue comparable to that of intrastate traffic.

There is thus no finding and no evidence to show that the increased fares prescribed for the intrastate passenger traffic are required in order that the contribution therefrom shall be fairly proportionate to contributions from other branches of the system, or are necessary to avoid discrimination against interstate traffic.

If the Interstate Commission is permitted to expand its jurisdiction as claimed in this case and can fix intrastate rates for the purpose of increasing railroad revenue with-

out the necessity of making any comparison between intrastate and interstate rates or revenues, the following will result: State commissions will lose all jurisdiction over intrastate passenger rates. The standard of rate making will be so vague that it could be neither followed nor reviewed.

The Interstate Commerce Act leaves to the states all jurisdiction over railroad traffic "wholly within one state"—subject only to the exception provided in Section 13(4) where prejudice or unjust discrimination against interstate commerce is clearly shown.

A large part of the activities of railroads within a state cannot be reached by the Interstate Commission under Section 13. A state commission alone may establish standards of service and call the carrier to task for poor equipment. For example, in the instant case, the evidence shows how the Illinois Commission in the prior rate case showed to the Milwaukee Railroad how it could save approximately $1,000,000 a year by converting its suburban operations from steam to diesel locomotives (R. 82)—and thus served as an effective agent in bringing about that conversion, to the immense benefit of the railroad and of the travelling public.

The public interest is thus furthered by the policy, inherent in the Interstate Commerce Act, of leaving to the state commission the power and duty to prescribe rates and standards of service for intrastate traffic—in the absence of a clear showing that state regulation results in unjust discrimination against interstate commerce.

III.

The Evidence Does Not Support the Finding That the Increased Fares as Fixed by the Interstate Commerce Commission Are Just and Reasonable.

The report and order of the Interstate Commission find that the increase in fares approved for the Milwaukee Road will result in fares that are just and reasonable for the future (Fdg. 4; R. 37).

That finding is essential to the validity of the order; but an examination of the record shows it has no support in the evidence.

The finding in question rests on the statement in the Interstate Commission's report that there is "a strong similarity" between the suburban territory served by the Milwaukee Road and that served by the North Western and hence that the schedule of North Western fares, summarized in the report, should be used as a basis in fixing fares for the Milwaukee Road (R. 35-6).

In the opposing briefs, the Interstate Commerce Commission and the Milwaukee Road suggest other matters—such as cost and wage indices, fares on buses and other transportation media—as reasons supporting the reasonableness of the fares prescribed by the Interstate Commission. But the report and order of the Interstate Commission make clear that the fares fixed were on the basis of what the traffic will bear, and that it was decided that the sole test of reasonableness was the present rates of fare of the North Western (R. 35).

There is no evidence to support any finding or conclusion that the Milwaukee Road's suburban operation is similar to that of the North Western, and that the same rates of fare should be prescribed for the Milwaukee Road as those fixed for the North Western.

The conclusion that there is "a strong similarity" between the suburban service of the two roads is based solely on an inaccurate reference to the testimony of J. K. Pain, Assistant General Passenger Agent of the Milwaukee Road (R. 35).

The phrase, "a strong similarity," is lifted out of context. An examination of the full testimony of this witness shows that he referred to the similarity in the territory served, but emphasized the difference in operation.

The full colloquy between the Examiner and the witness is as follows (R. 177-180):

> "Exam. Fuller: I would like to ask a question which is more or less the $64.00 question. I think you ought to explain a little more just why you are proposing these different bases and why you are proposing a higher basis than the North Western basis when you were at one time on the same basis.
>
> A. Well, of course, I am not prepared to go into the cost or the expense. I believe there is a difference in the operation of the two roads. I think each road has a different,—
>
> Exam. Fuller: I just wanted to ask that question from the standpoint of traffic.
>
> The Witness: Well, I am really not prepared to go into the cost, as I say, or the expense. That is a little bit out of my line. But, the increase, of course, endeavored to be figured on the most equitable basis that would recover our losses. That is the only way I can answer it now. A basis that would be equitable, that would be fair to the suburban passenger.
>
> Exam. Fuller: You said your increased revenue would be $518,000.
>
> The Witness: Yes, $518,000 in round figures.
>
> Exam. Fuller: I believe the North Western's one way basis in the suburban area is three cents with a minimum of 20 cents.
>
> The Witness: Yes.
>
> Exam. Fuller: What are you proposing?
>
> The Witness: We are proposing 3.2.

Exam. Fuller: With a minimum of 25 cents?

The Witness: Twenty-five cents.

Exam. Fuller: Why do you think you should get more from a traffic standpoint than the North Western?

The Witness: Well, is this off the record?

Exam. Fuller: No, I want this on the record.

The Witness: Well, I really couldn't—I don't know why we should get any more unless probably our conditions are different on our railroad. We probably need more money. Need more revenue."

* * * * *

Exam. Fuller: Well, so far as the nature of the suburban communities you serve, and the nature of your line—you have two lines. The North Western has three, I understand. Your territory is pretty similar.

The Witness: Well, in what respect, sir? You mean geographically or in operation, or what?

Exam. Fuller: I am just talking about the nature of the suburban community.

The Witness: Yes, you could probably say there is strong similarity.

Exam. Fuller: That is all I have. Are there any other questions now?"

Following the foregoing colloquy, the attorney for the Milwaukee made the following statement: "We do not offer these North Western fares as criteria of what our fares should be" (R. 180).

It is on this evidence that the Commission rested its decision to grant to the Milwaukee Road the fares charged by the North Western. No evidence was offered showing similarity of equipment, service, or operating conditions. In fact, the Milwaukee Road expressly refuted the propriety of a comparison of its rates with those of the North Western.

The record shows that the lines are not comparable. The present suburban North Western rates are based upon a suburban operation of 72 steam locomotives and only three

diesel locomotives (R. 347), as against a complete diesel operation on the Milwaukee. A comparison of the cost of the Milwaukee suburban operation under steam and diesel locomotives shows that the diesel operation costs the Milwaukee Road approximately $900,000 a year less than steam (See tabulation, p. 16, above).

The statement in the brief of the Interstate Commission (p. 29) that "as the Commission points out in its report after a joint hearing by the two commissions in 1951, the commutation fares of this railroad [the Milwaukee Road] had been placed on the same level as those of the North Western," proceeds from a false inference as to the purport of the Interstate Commission's report.

As appears from that report (R. 29-30), the 1951 proceeding as to the suburban passenger rates of the Milwaukee Road started as a joint hearing, but the proceeding before the Interstate Commission was dismissed, and the final hearings and order were those of the Illinois Commission.

The Interstate Commission's report in the instant case states in cents per mile the intrastate and interstate passenger fares on the Milwaukee Road and the ratios used to determine therefrom the cost of multiple-ride tickets. The only fares stated to have a similarity to those of the North Western are commutation fares (R. 29)—and whether that similarity is in amount or in method of ascertainment is not clear.

At any rate, it has been clearly stated by the Interstate Commission that the rates of passenger fares as now prescribed for the North Western cannot properly be used as a basis for establishing fares for a diesel operation like that of the Milwaukee Road. The proceeding in which the North Western's suburban fares were raised to their present high level is *Commutation and Multiple Fares between Illinois and Wisconsin*, 288 I. C. C. 15. In that case the

Interstate Commission's report includes the following (p. 23):

> "The above analysis [on which the Commission's order was based] relates to an existing suburban operation for the year 1951 and obviously does not contemplate the cost of some other suburban operation such as might be encountered with diesel engines, gallery-type cars and Budd cars."

The Interstate Commission, in fixing fares for the North Western, has also taken into consideration the fact that the Milwaukee division of the North Western carries no freight whatsoever and that the entire costs there must be borne by passenger traffic.

> *Commutation Fares Between Chicago and Wisconsin*, 279 I. C. C. 773, 777-778.

In view of the difference in operating conditions between the suburban services of the Milwaukee Road and the North Western, the use of the North Western rates of fare, as a measure of rates to be fixed for the Milwaukee Road, cannot be justified.

As was said by the Illinois Supreme Court in reversing an order of the Illinois Commission which approved certain rates on the ground that like rates were fixed on another line:

> "Nor can the order be sustained upon mere findings making comparison between the rates attacked and the rates and ton-mile earnings elsewhere. * * * To afford a sufficient basis for comparison there must be findings of fact showing such similar conditions of operation as well as findings as to the distances and rates."
>
> *C. & E. I. Ry. Co.* v. *Commerce Commission*, 343 Ill. 117 (125).

The Milwaukee suburban operation is much more comparable to the suburban operation of the Burlington and

Rock Island than it is to the North Western operation. Those are the other two Chicago railroads using diesel locomotives. The Commission, nevertheless, ignored that comparison (R. 345) and held, in effect, that the Illinois Commission was wrong in giving weight to it.

Without sufficient evidence of comparability in operation, there is no ground for fixing the Milwaukee Road's fares at the North Western level, or for finding that the resulting fares are just and reasonable.

IV.

THE INTERSTATE COMMISSION HAS NO JURISDICTION TO INTERVENE ON PETITION OF THE CARRIER AND TO FIX ILLINOIS INTRASTATE PASSENGER RATES, WHERE THE ILLINOIS COMMISSION HAS BEEN GIVEN NO OPPORTUNITY TO PASS ON SUCH RATES UNDER THE CONDITIONS AND ACCOUNTING METHODS ON WHICH THE CASE IS PRESENTED TO THE INTERSTATE COMMISSION.

A.

The Interstate Commission Has No Jurisdiction, on Petition of a Carrier, to Nullify Intrastate Rates Unless Those Rates Were Fixed by State Authority Upon a Fair Presentation of the Facts and Accounting Theory Relied Upon, and Their Effect Is to Cause an Undue, Unreasonable or Unjust Discrimination Against Interstate Commerce.

As shown under Point I of this brief, the state authorities have primary jurisdiction over intrastate rates. (See p. 29, above.)

The Interstate Commission has no jurisdiction to intervene and to set aside rates fixed by a state commission un

less and until justification for exercise of Federal power is clearly shown.

North Carolina v. *United States*, 325 U. S. 507 (510-11).

And see:

Illinois Central R. R. Co. v. *Public Utility Commission*, 245 U. S. 493 (510),

cited with approval in the *North Carolina* case.

The Interstate Commission thus has no jurisdiction under Section 13(4) to set aside an order of a state commission fixing intrastate rates unless it clearly appears that the state commission, by its action, caused an undue, unreasonable and unjust discrimination against interstate commerce.

Before its application to the Interstate Commission in this case, the Milwaukee Road requested an increase in fares from the Illinois Commission. A summary of the proceedings before the Illinois Commission is set forth at pages 14 to 20, above. As there shown, the Milwaukee Road presented evidence and relied on an accounting theory that was different from the evidence and accounting theory relied on in the Interstate proceeding. The duty of a carrier requesting a fare increase, to present its case to the state commission, is not discharged when the case presented to the state commission is different in fact and theory from that presented to the Interstate Commission.

The purpose of Section 13(4) of the Interstate Commerce Act is to protect interstate commerce from rates "made or imposed by authority of any State" that discriminate unreasonably and unjustly against interstate commerce. The State still has the primary jurisdiction of determining what intrastate rates are just and reasonable; but Section 13 gives the Interstate Commission the power to fix intrastate rates, when the rates fixed by State authority are shown

clearly to have caused undue, unreasonable and unjust discrimination against interstate commerce.

The requirement that there must be an initial application to State authority to determine just and reasonable intrastate rates before (or at the same time that) application is made to the Interstate Commission under Section 13(4), is well established. Of the many Section 13 cases appearing in the court reports, including all those cited by the United States and Interstate Commission in their brief, there is not one where a carrier sought a new level of fares directly from the Interstate Commission under its Section 13(4) power without making application to a State commission.

The language of the statute permitting federal action where rates are "made or imposed by authority of any State" taken together with the holding in *North Carolina* v. *United States*, 325 U. S. 507, quoted from above (p. 29), makes clear the requirement of initial action by state authority.

The necessity for prior state action is recognized in *Florida* v. *United States*, 282 U. S. 194, where the Court said (p. 209):

> "* * * While the 'Cummer scale' of rates was not prescribed by the Florida Railroad Commission and was not the result of any affirmative action on its part, these rates were maintained in intrastate commerce subject to the authority of the State and were published as required by its laws. These rates may thus be regarded as made by the authority of the State and within the purview of the Act. * * *"

In the *Florida* case, no prior application was made to the Florida Commission, but under the circumstances, none was called for. The proceeding before the Interstate Commission was initiated by the *Georgia* Public Service Commission, which was complaining against rates within *Florida* that the carrier and the Florida Commission had both found

satisfactory. In that case, a Section 13 (4) proceeding was the only way by which the Georgia Commission could obtain redress.

The *Illinois Central* case—*Illinois* v. *United States*, 101 Fed. Supp. 36, aff'd 342 U. S. 936 also is not authority to the contrary. In that case there were concurrent applications to the two commissions and a joint hearing, so that the same evidence was presented to each commission. On that evidence, the Illinois Commission first fixed the rate that the Interstate Commission found to be unfairly discriminatory against interstate commerce—and hence subject to be set aside under Section 13.

And this is also true of *North Carolina* v. *United States*, 128 Fed. Supp. 718; aff'd 350 U. S. 805.

A holding that the Interstate Commission may, under Section 13 (4), proceed to set rates even if no application has been made to a state commission for a rate increase, would effectively deprive the states of all jurisdiction over intrastate rates and destroy the orderly administrative procedure so well established. Under such a rule, a carrier could appeal to Federal authority for setting of intrastate rates on the ground that interstate commerce would be burdened unless rates were increased, even though the proper state commission might, if it had been applied to, have granted a new scale of just and reasonable rates that would cause no discrimination against interstate commerce.

B.

The Milwaukee Road Presented Different Evidence and Relied Upon a Different Accounting Theory Before the Illinois Commission From That Presented and Relied On Before the Interstate Commission. The Order of the Illinois Commission Was Correct On the Case There Presented and Hence the Rates Imposed Did Not Cause Undue, Unreasonable or Unjust Discrimination Against Interstate Commerce Within the Meaning of Section 13 (4).

In the Milwaukee Road's petition to the Illinois Commission, it asked for an increase in fares on the ground that the then existing fares were insufficient "to permit operation of the Chicago suburban service without an out-of-pocket loss." (R. 77.) The Illinois Commission found that (with diesel operation) there was, or should be, no such loss and therefore entered an order denying the petition (R. 91). No appeal was taken from that order.

The Milwaukee Road now seeks to have the Interstate Commission intervene, and thereby to nullify the Illinois Commission's order, on the ground that the effect of that order is to cause a discrimination against interstate commerce.

There is no basis for such intervention by the Interstate Commission. The Illinois Commission's order was correct on the theory of the case presented by the Milwaukee Road—and there is no ground upon which the order can be found to be unfair or unjust. If a new theory of costs is to be adopted, it should be presented to the Illinois Commission (or jointly to the two Commissions) before the Interstate Commission is asked to exert its authority under Section 13.

The alleged losses claimed by the Milwaukee Road in the

case before the Illinois Commission were incurred in 1952, when the Milwaukee Road was operating its suburban service with steam locomotives.

The Illinois Commission found "that conversion to diesel operation would reduce petitioner's [Milwaukee Road's] operating costs approximately $1,000,000 per year," and that after such saving, the out-of-pocket expenses would be exceeded by revenues (R. 91). On that basis, the Illinois Commission denied the proposed increase in fares.

The evidence in the present proceeding supports the Illinois Commission, if the same accounting basis is used.

In the case before the Illinois Commission, the Milwaukee Road expressly represented that depreciation was not, and should not be, considered as an out-of-pocket expense. As stated by the Milwaukee Road in its Exhibits 25 and 26 in the Illinois case (included in Protestant's Ex. 21, R 401-10, 274) depreciation of locomotives and coaches is "not included in the out-of-pocket cost."

Likewise, in the case before the Illinois Commission, the Milwaukee Road did not include in out-of-pocket expense, certain maintenance-of-way accounts involving maintenance of facilities (such as road bed, etc.) which would have to be maintained even if there were no suburban service.

As to the reasons for not including those accounts—as well as depreciation—among the items included in out-of-pocket expenses in the Illinois case, R. S. Stephenson, Comptroller of the Milwaukee Road, testified (R. 203):

> "In the case before the State [*i.e.*, the Illinois Commerce Commission] there was such a margin between the expenses and revenues that some of these items didn't seem to be important at the time."

If operating figures found by the Examiner in the present case are adjusted so as to eliminate the items of depreciation and the maintenance-of-way accounts not claimed as

out-of-pocket expenses in the Illinois case, little, if any, out-of-pocket deficit is shown.

This appears from the tabulation at page 18 above.

The adjusted deficit for 1954 of $47,866 is the figure found by the Interstate Commission with only the adjustments made for the expenses claimed in the case before the Interstate Commerce Commission which were not claimed in the case before the Illinois Commission. If the figures are adjusted further for the increase in revenues shown in the last 4 months of 1954, the annual deficit is $21,056. Further adjustment of expenses to allow for the partial use of steam engines and non-suburban diesels during the base period would probably eliminate that small deficit.

It follows that the loss in suburban operation, which is the basis of the Interstate Commission order here complained of, could not have been found by the Illinois Commission to exist, because of the difference in the evidence presented to the Illinois Commission. Since the Milwaukee Road, in the Illinois proceeding, took the position that reasonable suburban rates should be based at a level which would produce revenues to meet out-of-pocket expenses, it is clear from the findings of the Interstate Commission that the order of the Illinois Commission was correct on the facts presented to it. If different evidence is to be offered, or a different basis of fares is to be proposed, the Illinois Commission must be given a chance to fix rates on that evidence and to consider that new basis of fares.

The failure of the Milwaukee Road to go to the Illinois Commission with its new evidence of post-diesel operation, and its new cost theory cannot be justified by any claim that the Illinois Commission acted unfairly or unjustly, or that the Illinois Commission would not set just and reasonable rates if application were made to it.

As the District Court said in this case (R. 470):

"In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear."

V.

In View of the Finding by the District Court that the Interstate Commission's Order Increasing Intrastate Suburban Rates Was Invalid, the District Court Properly also Held Invalid and Set Aside the Interstate Rates to Zenda and Walworth, Wisconsin, Which Depend for Their Validity on the Intrastate Rates to Intervening Stations.

The Interstate Commission, in its brief (pp. 41, *et seq.*) argues that the increases in interstate fares to Zenda and Walworth, Wisconsin, should have been allowed by the District Court to stand, even though the increase in the intrastate fares is invalid.

This point is not raised in the brief of the Milwaukee Road. It has no merit.

Walworth and Zenda are at the end of the north suburban line of the Milwaukee Road and are served by one suburban train a day in each direction—in addition to two through trains which stop at Walworth.

The interstate fares to those two Wisconsin stations were increased so as to correspond with the increases directed by the Commission in the intrastate suburban fares between Chicago and intervening stations in Illinois.

No evidence was offered relating particularly to the fares to the two Wisconsin stations. The question as to the validity of the increases in those fares rests wholly on the determination as to the validity of the increases in the intrastate fares to the intervening stations, and has no independent status.

The brief of the Interstate Commission (p. 41) states or infers that the complaint in the District Court did not ask that the order with respect to interstate fares to Wisconsin stations be set aside. That statement, or inference, is in error.

This is clear from the prayer of the complaint which asks (R. 22):

> "That this (District) Court, or the Judge to whom this complaint is presented, shall issue a temporary restraining order:
>
> (i) Enjoining the Interstate Commerce Commission from enforcing its said report and orders dated November 21, 1955 and March 2, 1956, in its Docket No. 31742 (Exhibits B and E attached); and
>
> (ii) Enjoining the Milwaukee Road from putting into effect the fares prescribed in said report and orders; * * *"

The orders of November 21, 1955 and March 2, 1956, referred to (R. 41, 76) authorize increases in both interstate and intrastate fares, and the complaint is directed to both orders.

Necessarily, the pleadings and evidence, and the reports, orders and decree involved, refer principally to the intrastate rates, as the case, as presented by the petition of the Milwaukee Road, depends on the jurisdiction of the Interstate Commission under Section 13(4) of the Interstate Commerce Act—and therefore relates primarily to the question of the right of the Interstate Commission to pass on intrastate rates.

But, there is no claim by the Milwaukee Road of an independent justification for an increase in rates to the two Wisconsin stations at the end of the line unless a like justification exists as to the rates to the intervening stations.

The decree of the District Court is correct in setting aside the order of the Commission relating to interstate suburban fares, along with the order as to intrastate fares. If the increase in intrastate fares cannot stand, the increase in interstate fares must also fall.

Conclusion.

We submit that for the reasons above set forth, the order of the District Court should be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ——

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court is not yet reported, and is set forth as Appendix A of the appellant's jurisdictional statement in *Chicago, Milwaukee, St. Paul and Pacific R. R. Co.* v. *State of Illinois*, No. 307, this Term. The judgment of the district court is set forth as Appendix B of the jurisdictional statement. The report of the Interstate Commerce Commission is reported in 297 I. C. C. 353. This report and the two resulting orders of the Commission dated November 21, 1955, and March 2, 1956, are set forth respectively as Appendix C, Appendix D, and Appendix E of the jurisdictional statement. The foregoing Appendices are incorporated herein by reference.

JURISDICTION

This suit was brought under 28 U. S. C. 1336 to set aside and enjoin enforcement of an order of the Commission. The judgment of the district court was entered on June 14, 1956, and the United States filed its notice of appeal in the district court on August 13, 1956. The jurisdiction of this Court to review the district court's judgment by direct appeal is conferred by 28 U. S. C. 1253 and 2101 (b), and is sustained by the following cases: *King* v. *United States*, 344 U. S. 254; *American Trucking Assns.* v. *United States*, 344 U. S. 298; *Frozen Food Express* v. *United States*, 351 U. S. 40.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 9–10.

QUESTIONS PRESENTED

(1) Whether the district court erred in holding that the Interstate Commerce Commission, in exercising the authority given it by Section 13 (4) of the Interstate Commerce Act to increase intrastate fares in order to remove an unjust discrimination against interstate commerce, may consider only evidence which has previously been presented to the state regulatory commission in a proceeding seeking an increase in the same intrastate fares.

(2) Whether the district court, in setting aside the Commission's order directing an increase in intrastate fares, erred in also setting aside the Commission's order authorizing an increase in interstate fares.

STATEMENT

In February 1955 the Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee) filed with the Commission a petition under Section 13 (3) of the Act for an investigation to determine whether the Milwaukee's intrastate passenger fares within the Chicago suburban area, made or imposed under authority of the Illinois Commerce Commission, were causing unjust discrimination against interstate commerce, and to determine what fares, if any, should be established in order to remove any such discrimination found to exist. The petition alleged that in July 1952 the Milwaukee had applied to the Illinois Commission for authority to increase such fares, and that in November 1954 the state commission denied the relief sought. It was further alleged that the Milwaukee was thereby required to transport passengers within the Chicago suburban area at fares entailing an out-of-pocket loss of more than $700,000 per year, and that this caused unjust and unlawful discrimination against interstate commerce.

After a hearing in which the Milwaukee, the Illinois Commission, and an association of commuter passengers participated, the hearing examiner issued a proposed report which found that the existing fares caused unlawful discrimination, and proposed fare increases adequate to remove the discrimination. Upon consideration of exceptions to this report, the Commission issued its report on November 21, 1955.

The Commission found (1) that the Milwaukee's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service,

and thus make no contribution toward its indirect costs or to a return on investment; (2) that the intrastate suburban fares cause and, unless increased to the extent prescribed, will continue to cause unjust discrimination against interstate commerce; (3) that such discrimination should be removed by establishing intrastate fares no lower than those prescribed in the appendix to its report; (4) that the prescribed fares will be just and reasonable, and will produce substantial additional revenue; and (5) that the Milwaukee's interstate suburban fares, on the basis of those prescribed for intrastate application, will be just and reasonable.

Coincident with the issuance of this report, the Commission entered an order authorizing the interstate rates which it had approved, i. e., those between Chicago and Walworth and Zenda, Wisconsin. This order did not require immediate establishment of the increased intrastate suburban fares, so as to allow a period of sixty days for approval of the increase by the Illinois Commission. This approval not having been given, the Commission by its order of March 2, 1956, directed the Milwaukee to establish the intrastate rates set forth in the Commission's report of November 21, 1955.

The state of Illinois, the Illinois Commission, and a commuter's association subsequently filed a complaint in the court below asking that the order increasing intrastate rates be set aside. The court rendered an opinion holding that the Commission had not made the findings requisite to a Section 13 (4) order, and that the evidence did not support the find-

ing that the prescribed intrastate rates were just and reasonable. In addition, the court, after observing that certain evidence as to the Milwaukee's out-of-pocket costs had been presented to the Interstate Commerce Commission but not to the Illinois Commission in the prior proceeding before that commission for authority to increase intrastate suburban fares, ruled that the Illinois Commission "should have been given a chance to fix fares on the same evidence and on the same basis" as the Interstate Commerce Commission.

The judgment of the district court remanded the cause to the Interstate Commerce Commission for further proceedings "not inconsistent with" the court's opinion. The judgment also set aside the order of the Commission authorizing an increase in the Milwaukee's interstate fares.

THE QUESTIONS ARE SUBSTANTIAL

1. The court below ruled that the Commission was not authorized to order an increase in intrastate rates pursuant to Section 13 (4) unless the applicant railroad had previously presented to the state agency having regulatory authority the "same evidence" as it presented to the Commission. We believe this ruling is directly contrary to the decision of this Court in *Florida* v. *United States*, 282 U. S. 194. In that case the Interstate Commerce Commission had entered an order under Section 13 (4) directing an increase in intrastate Florida rates which the Florida Railroad Commission had not prescribed but which had been maintained in intrastate commerce "subject to the authority of the

State" and "published as required by its laws". 282 U. S. 209. It was contended that Section 13 (4) did not empower the Commission to deal with these rates because they had not been "made or imposed by authority of any State".[1] In rejecting this contention, this Court said that the "fundamental purpose" of Congress was "to reach intrastate rates that were found to result in unjust discrimination against interstate commerce", and that the Commission's authority was not limited to rates which had been "affirmatively prescribed by the State." *Id.* at 210. The Court further said (*ibid.*):

> To hold, as some of the appellants urge, that there can be no adjustment of intrastate rates by the Interstate Commerce Commission so far as may be needed to protect interstate commerce until the State itself has first "sat in judgment on the issue of the lawfulness of those intrastate rates" would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority.

In *North Carolina* v. *United States*, 128 F. Supp. 718 (E. D. N. C.), affirmed, 350 U. S. 805, the railroads sought and obtained an order from the Interstate Commerce Commission increasing intrastate rates pursuant to Section 13 (4) without having first exhausted the remedies as to these rates given by state law. The court, in affirming the Section 13 (4) order, said that the contention that the Interstate Commerce Commission was without jurisdiction until

[1] Before acting under Section 13 (4), there must be an investigation under Section 13 (3), and Section 13 (3) is confined to rates "made or imposed" by State authority.

remedies under state law had been exhausted "is without merit". 128 F. Supp. 724. Accord: *Illinois* v. *United States*, 101 F. Supp. 36, 47 (N. D. Ill.), affirmed, 342 U. S. 930; rehearing denied, 343 U. S. 911.

Since the authority given by Section 13 (4) trenches upon state regulatory power, the courts should be careful to maintain the limits of the statutory authorization. But Section 13 (4) is also designed to promote an efficient national transportation system, by preventing state regulatory action which in effect or purpose places local interest above the national interest. We believe that it is wholly foreign to the basic purposes of the section to hold that the Commission's authority to act is contingent upon the fortuitous circumstances that the applicant railroad or railroads had, before invoking the authority of the Interstate Commerce Commission, presented to a state regulatory commission the same evidence as put before the Interstate Commerce Commission.

2. The opinion and judgment of the district court resulted from the filing of a joint complaint by the present appellees. The complaint stated that its purpose was to set aside an order of the Interstate Commerce Commission fixing "intrastate" rates for the Milwaukee's Chicago suburban passenger service. The validity of the Commission's order authorizing interstate rates for two Wisconsin points was outside the scope of the proceeding, nor did the court's opinion deal with the validity of the two interstate rates. We submit, therefore, that the court plainly erred in

entering a judgment which set aside the order authorizing an increase in these interstate rates.

CONCLUSION

For the reasons stated, the questions presented by this appeal are substantial. It is respectfully submitted that probable jurisdiction should be noted.

J. LEE RANKIN,
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VICTOR R. HANSEN,
Assistant Attorney General.

CHARLES H. WESTON,
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OCTOBER 1956.

APPENDIX

Section 13 of the Interstate Commerce Act, 49 U. S. C. 13, provides in part as follows:

> (3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.
>
> (4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation,

or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

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No. 27

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 27

UNITED STATES OF AMERICA, APPELLANT

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STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MEMORANDUM FOR THE UNITED STATES

The appeal taken by the United States in this case presented only the following questions (R. 483–484):

1. Whether the Interstate Commerce Commission, in directing increases in intrastate passenger fares, pursuant to Section 13 (4) of the Interstate Commerce Act, is precluded from relying upon evidence which had not been introduced at a prior proceeding before the state regulatory commission in which the latter had refused to increase the intrastate fares.

2. Whether the district court, in setting aside the Commission's order directing increases in intrastate fares, further erred in also setting aside that part of the order which authorized increases in interstate fares.

The appeal taken by the Interstate Commerce Commission in No. 28 presented the two foregoing questions and two additional questions (R. 484–485). The United States, in support of its appeal, adopts the arguments advanced by the Interstate Commerce Commission in Points III and IV of the brief which it has filed in No. 28.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

AUGUST 1957.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. ~~502~~ 27

UNITED STATES OF AMERICA,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION

Appellees.

No. ~~503~~ 28

INTERSTATE COMMERCE COMMISSION,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 502.

UNITED STATES OF AMERICA,
Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,
Appellees.

No. 503.

INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION TO AFFIRM.

Now comes the Appellees, State of Illinois and the Illinois Commerce Commission and pursuant to Rule 16, paragraph 1(c) of the Revised Rules of the Supreme Court respectfully move that the judgment of the District Court

be affirmed on the ground that the questions raised by the Appellants are so insubstantial as not to require further argument.

STATEMENT OF THE CASE.

This is a direct appeal from the judgment of a statutory three Judge District Court entered on June 14, 1956, pursuant to 49 USCA 17(9) and 28 USCA 2321-25. The judgment set aside, annulled and permanently enjoined the enforcement of an order entered by the Interstate Commerce Commission pursuant to an investigation under Section 13(4) of the Interstate Commerce Act in a proceeding entitled "Chicago Intrastate Suburban Fares of the Milwaukee Road".

The Milwaukee Railroad had filed with the Illinois Commerce Commission on July 24, 1952, a petition to discontinue all of its off-peak suburban trains and requested an increase in suburban fares on the remaining trains of approximately 33%, or in the alternative, if the discontinuance of trains was denied, that the suburban fares be raised approximately 73%.[1] The Railroad in that petition claimed an out-of-pocket deficit from the Chicago suburban operations of approximately $1,260,000. The evidence introduced by the Railroad before the Illinois Commission made no claim for any depreciation or maintenance of way expense as constituting a part of the out-of-pocket expense. In the extended hearings before the Illinois Commission, the evidence developed that the operating expenses of the Railroad were inflated and that by converting the suburban operation from steam to diesel locomotives, the Railroad could save approximately $1,000,000 annually which would eliminate any deficit on the

1. Such percentages are the arithmetical derivation from applying the new schedules against the old.

suburban service. Consequently, the Illinois Commission on November 10, 1954 by an appropriate order denied any fare increase to the Milwaukee Railroad.[2]

The rates left in effect by the order of the Illinois Commission were as high or higher than the rates for diesel operated service on the Burlington and Rock Island Railroads, but were somewhat lower than those of the electrified service of the Illinois Central and South Shore and the steam locomotive service of the North Western.

After the denial of any fare increase by the Illinois Commission, the Milwaukee Railroad filed in February 1955, a petition with the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act requesting that Commission to authorize an increase in the suburban intrastate fares upon the basis that the present intrastate fares constituted an undue burden on interstate commerce. In the proceeding before the Interstate Commission, the Railroad introduced different evidence and claimed depreciation and maintenance of way as part of the out-of-pocket expense on the suburban operation which had not been claimed or introduced before the Illinois Commission.

On November 21, 1955, the Interstate Commission issued its report (297 I.C.C. 353) prescribing an increase in the

2. By the end of September 1954, the Railroad had completely dieselized the suburban operation. The report of the Interstate Commission after allowing depreciation and maintenance of way expense of over $250,000 determined that the Railroad's out-of-pocket expense was only $306,038. Thus, the Interstate's report of November 21, 1955, confirmed the finding of the Illinois Commission that dieselization would save approximately $1,000,000 annually. Any failure of the Illinois Commission to take any cognizance of depreciation, on the diesel locomotives themselves, was the absence of any claim or evidence of depreciation being offered by the railroad.

intrastate suburban fares.[3] The report found that the Railroad had an out-of-pocket deficit of $306,038 on the suburban operation and prescribed fares which should result in an increase in revenue of $383,000 "which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes of approximately $77,000 annually." The report further found that the Milwaukee Railroad earned from its freight operations $37,393,050 (both interstate and intrastate) and suffered a deficit from its passenger operations of $22,824,532 (mostly interstate). *Not one word is found in the report concerning the Railroad's revenue* (other than suburban revenues) *nor any finding or subsidiary statement regarding the contribution that the suburban service should make as its fair proportionate share to the Railroad's income.*

After overruling petitions for rehearing and reconsideration, the report was made final by order entered March 2, 1956 directing the higher prescribed fares to become effective April 20, 1956.

On April 18, 1956, the Appellees filed an action to review the Interstate Commission's report and order pursuant to 28 USCA 1336. The statutory three Judge District Court, after briefs and oral arguments, set aside the order of the Interstate Commission.[4]

3. Some of the prescribed fares were substantially higher than even those proposed by the Railroad. See Table 1 of the Appendix to the Commission's report.

4. The court's opinion is not yet reported but is set forth at pages 13-25 of the Jurisdictional Statement in No. 503.

ARGUMENT.

This appeal does not present any substantial question. The matter pertains to an essentially local situation which has been heard and decided by a unanimous three Judge District Court.

The case, as the Commission's report clearly discloses, is not a "person or localities" discrimination but one of alleged revenue discrimination. The Railroad contended and the report and order of the Interstate Commission found that the intrastate suburban fares created such unjust discrimination against interstate commerce as to justify a Section 13(4) prescription of intrastate suburban fares. The judgment of the lower court is simply that the "justification for the exercise of federal power to nullify state rates does not clearly appear from the record before us."[5] While appellants have assigned questions directed at certain statements in the District Court's opinion, it is the lower court's *judgment* which this court reviews and not the particular statements made in the opinion. *Black* v. *Cutter Laboratories*, 351 U. S. 292, 297.

However, a reading of the court's opinion clearly shows that the court properly reviewed the report and order of the Interstate Commission and rendered its judgment according to pronouncements of this court in *King* v. *United States*, 344 U. S. 254; *North Carolina* v. *United States*, 325 U. S. 507; *Florida* v. *United States*, 282 U. S. 194; *Wisconsin RR Com.* v. *Chicago, B. & Q. RR Co.*, 257 U. S. 563; and the more recent decisions of *Mississippi*

5. As this court stated in *North Carolina* v. *United States*, 325 U. S. 507, at 511: "Before the Commission can nullify a state rate, justification for the 'exercise of the federal power must clearly appear.'"

Public Service Com. v. *United States*, 124 F. Supp. 809, aff'd. 349 U. S. 908, and *State of North Carolina* v. *United States*, 128 F. Supp. 718, aff'd. 350 U. S. 805.

We shall discuss the questions presented by the appellants in the same sequence that they have raised them in their respective Jurisdiction Statements.[6]

I.

The District Court properly criticized the procedure used by the Railroad and correctly held that the State Commission should be afforded the opportunity to fix fares upon the same evidence and basis as the Interstate Commission.

In so ruling, the district court did not go contrary to this court's decision in *Florida* v. *United States*, 282 U. S. 194; nor the decisions in *State of Illinois* v. *United States*, 101 F. Supp. 36, aff'd 342 U. S. 930; and *North Carolina* v. *United States*, 128 F. Supp. 718, aff'd 350 U. S. 805. As we have pointed out in our Motion to Affirm in No. 307 at pages 6 to 9, the instant case is outside the factual scope of those decisions and the lower court did not err in requiring more than mere "way station" consideration be given to the State Commission.

No hardship is present in the requirement of the District Court that the state regulatory body "should have been given a chance to fix rates on the same evidence and the same basis" as the Interstate Commission. Nor does the remandment to the Interstate Commission "for further proceedings not inconsistent with the opinion" tie the

6. The Solicitor General in No. 502 raises only two questions. He does not question the basic reason for the judgment of the lower court, *i.e.* that the Interstate Commission's report failed to make the requisite finding of what contribution the intrastate fares should make as their fair proportion of the Railroad's income.

hands of the Interstate Commission as stated by appellant in No. 503. The Interstate Commerce Act allows joint hearings[7] and the usual procedure in suburban fare cases is to make application before both commissions and have a joint hearing with the same evidence being presented to the two commissions at the same time.[8] A joint hearing was the procedure adopted in *State of Illinois* v. *United States*, 101 F. Supp. 36, aff'd 342 U. S. 930. It is the procedure which has been followed in other suburban fare cases and is presently being followed in *In the Matter of Illinois Central Suburban Fares*, I.C.C. Docket 31944 and Ill.C.C. Docket 43175 and *Commutation Fares, Chicago, North Shore and Milwaukee Railway*, I.C.C. Docket 32043 and Ill.C.C. Docket 43625. The situation involved in the instant matter was ideal for a joint hearing since the railroad sought an adjustment in both intra and inter state suburban fares. Even the Interstate Commission in its report commented upon the departure from the usual procedure of filing petitions with both commissions, "so that like cooperative action could be taken". 297 I.C.C. at page 355.

Not only does the joint method allow the same evidence and presentation to each respective commission, but it affords a saving in time, expense and a quicker decision on the ultimate issues including any discrimination under Section 13(4). The length of time involved in the present Milwaukee Railroad's suburban fare increase case and the admonishment of the District Court not to treat the state Commission as a mere way station rests upon the shoulders of the Railroad. They adopted the procedure and presented the case which has resulted in the present state

7. Section 13(3), 49 USC.

8. It must be kept in mind that this case is not the usual state wide increase of intrastate rates to bring them to the same level as had been prescribed for interstate rates.

of affairs.[9] Upon remandment the Railroad can still use the joint hearing procedure and effectively free the hands of both Commissions while at the same time complying with the mandate of the Court.[10]

II.

The dilemma or question, *if any*, which the decree of the district court casts upon the interstate fares for Zenda and Walworth, Wisconsin, was created by the Railroad and the Interstate Commission itself and does not warrant the time and consideration of this court.

First, an examination of the decree does not establish that the interstate fares are included in the court's injunction.[11] The decree states:

> "1. The order of the Interstate Commerce Commission, dated March 2, 1956 (and the prior report and order dated November 21, 1955, upon which the order of March 2, 1956, was based) entered in proceeding Docket No. 31742, are beyond the power, and are an abuse of authority, of the Interstate Commerce Commission."

---

9. In a straight rate hearing, Section 36 of the Illinois Public Utilities Act (Chapter 111⅔, para. 36, Illinois Revised Statutes—1955) limits the total time which the Illinois Commission can suspend a rate increase to ten months.

10. While Section 13(3) does not compel the state to enter into a joint hearing, the Illinois Commission has never refused. What effect a refusal would have should await the time there is that refusal.

11. The opinion of the District Court indicates that only intrastate fares are under discussion as it starts out by saying: "This is an action to set aside * * * an order of the Interstate Commerce Commission authorizing Chicago, Milwaukee * * * to put into effect intrastate rates * * * higher than those authorized by the Illinois Commerce Commission". Appendix A, page 13, of Statement in No. 503. No interstate rates could be authorized by the Illinois Commission.

The decree then proceeds to enjoin "said report and orders" (being the order dated March 2, 1956 and the "report and order dated November 21, 1955, *upon which the order of March 2, 1956, was based*").[12] The decree further states that the Milwaukee Railroad shall return the monies received as excess fares under the order of the court dated April 18, 1956. That order refused the plaintiffs' (appellees here) a temporary injunction upon the condition that the Railroad would impound the excess fares collected "from and after April 20, 1956, pursuant to the order of the Interstate Commerce Commission." The new fares which were to go into effect on April 20, 1956 were only the *intrastate* fares pursuant to the order of March 2, 1956, and not the two interstate fares which had already gone into effect on January 29, 1956.[13] While it is true that the United States and the Interstate Commission filed a motion pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, to amend or correct the decree of June 14, 1956, so as to exclude from the decree the authorized increase in *interstate* fares, they also sought in the same motion to delete from the opinion all statements to the effect that the state Commission should be allowed to fix rates upon the same evidence and basis as the Interstate Commission.[14] The court thereafter denied the motion without expressing any views. The appellants only assume that the decree affects the interstate fares and as pointed out such construction is questionable. The

12. See Appendix B, pages 26-27, of Statement in No. 503 for the full decree.

13. See Milwaukee Railroad's brief page 19 in No. 307.

14. Appellees filed objections to that motion pointing out that Rule 60(a) provides for only correcting clerical mistakes such as an error made by a clerk in transcription. *West Virginia Oil & Gas v. Breece Lumber Co.*, 213 F. 2d 702. We also pointed out that the increase of the two interstate fares was only to correspond with the intrastate increase and if the latter fell the Commission should reconsider its order as to the interstate.

assumption is obviously based upon their own confusion in making the report of November 21, 1955 embrace Dockets Nos. 26550 and 11703 (See 297 I. C. C. 353). However, such report clearly stated that an appropriate order affecting the interstate fares "will be entered" in the 26550 and 11703 dockets (See 297 I. C. C. at 360) which, it would seem, would be separate and distinct from the "report and order dated November 21, 1955, upon which the order of March 2, 1956, was based." We do not feel that this court should be imposed upon at this time to alleviate a questionable assumption which the appellants have presumed. A more appropriate time would be after the issue is directly presented to the District Court for repayment of the impounded funds in the event this court affirms the lower court.

Second, and assuming that the decree affects the two interstate fares, we respectfully submit that such a question is insubstantial. It is clear from the report of the Interstate Commission that the two interstate fares for Zenda and Walworth were not fixed or determined by the Commission as a separate matter, but were determined solely on the basis of the prescribed intrastate suburban fares.[15] Obviously, if the basis for the establishment of the intrastate fares fall, so also the basis for the two incidental interstate fares. Consequently, the District Court would be fully justified in setting aside and annulling the two interstate fares along with the intrastate rates.

III.

The District Court correctly held that the order and report of the Interstate Commission lacked the essential finding that the intrastate rates did not contribute their fair proportionate share of the carrier's total income.

15. Finding 5, 297 I.C.C. at 360.

The fundamental requirement that this court has uniformly maintained is that the intrastate traffic should only pay its "fair proportionate share" of the cost of maintaining an adequate railway system.[16] The Interstate Commission in No. 503 does not disagree with that proposition but contends that the present report and order has met that requirement. It states that the Commission's findings are "the equivalent" to the findings approved in the *King* case and that there is no practical distinction between a fair contribution to indirect costs and return and a fair proportion of total income.[17]

The District Court held the contrary, saying:

> "A fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment. Paying all of the costs of suburban service and, in addition, making a contribution to other costs of the railroad, may well be more than contributing a fair proportion of Milwaukee Road's total income."

The logic of the court's reasoning is clear. The report found that the Railroad had a passenger deficit of $22,800,000 while it earned from freight operations, both intrastate as well as interstate, $37,393,000. Nothing is said as to the total passenger revenue or as to the total revenues from all operations. So far as the report shows the interstate passenger revenue could be zero so that any increase in suburban revenue would naturally reduce the total pas-

16. *Wisconsin* v. *Chicago B. & Q. R. R.*, 257 U. S. 563, 586; *Florida* v. *United States*, 282 U. S. 194, 211; *North Carolina* v. *United States*, 325 U. S. 507, 516; *King* v. *United States*, 344 U. S. 254, 275.

17. The Solicitor General, however, in No. 502 feels that the present report is not the "equivalent" and that there is a practical distinction. He agrees with the decision of the District Court in setting aside the Commission's order for failure to make the required finding.

senger deficit, but does that show a failure of *fair proportionate contribution?*

When this court uses the words "fair proportionate share" there should be some significance given to the words "fair" and "proportionate." There must be something in the findings or subsidiary recitals in the report with which to make comparisons to determine whether the intrastate is contributing its "fair proportionate share." Merely that the intrastate rates on the suburban service "were not remunerative or reasonably compensatory" does not establish the justification for setting aside state rates. *Florida* v. *United States*, 282 U. S. 194, 214. The instant report is totally lacking in facts from which one can make a comparison to determine what would constitute a fair proportionate contribution. The Interstate Commission is again trying to ignore the requirement of the Statute that there must be "*undue, unreasonable,* or *unjust* discrimination against interstate" commerce.[18] The Commission takes the position that the carrier should get its money wherever it can regardless of any discrimination, let alone unjust discrimination. As the report bluntly states:

> "the fact that respondent cannot make a profit or at least so far has been unable to make a profit on its other passenger-train service is no reason for depriving it of an opportunity to make a profit on its suburban operations"

and the addition of the words "if it can be done at lawful fares" does not remove the sting nor the underlying attitude expressed, especially when the so-called "lawful fares" are arrived at without comparing the contributions

18. This court in *North Carolina* v. *United States*, 325 U. S. 507 at 512 cautioned the Commission that Congress intended some meaning and weight to be given the words "unjust discriminati[illegible]" and that the court would not condone an oversimplified form of proof.

made by intra and inter state to determine any "unjust discrimination." Lawful fares in the absence of such unjust discrimination against interstate commerce are those prescribed by the State. The District Court referred to this disregard of fundamentals by saying: "The limitless requirements implicit in the practice just cited from the report are reminiscent of public fund raising campaigns which used as their slogan 'Give till it hurts'." It is time that the brakes were again applied to the loose reports and findings of the Commission. The mere statement that there is undue, unreasonable and unjust discrimination against interstate commerce without reciting facts to support such conclusion should be condemned. The District Court has expressed its censure in holding that "justification for the exercise of federal power to nullify state rates does not clearly appear from the record before us." We respectfully submit that this court should affirm that judgment.[19]

IV.

The District Court has correctly ruled that rates can not be found just and reasonable upon a comparison with the rates of another carrier without showing that the operating conditions of the two carriers are similar.

The appellant, Interstate Commerce Commission in No. 503 (page 11) concedes that the Commission "has held frequently" that rate comparisons on a revenue basis in order to be valid must be based on similarity of transportation conditions and that the Commission in the instant case made

19. We are fully aware of the need of an efficient, strong and adequate national transportation system. However, we also believe that the mass transportation which is involved in these suburban fare cases is equally important to the national interest. The problems of traffic congestion and the large loss of life in traffic accidents require, in the public need, the promotion and continuance of adequate mass transportation commuter service at reasonable rates.

no such comparison.[20] However, the Commission states that the court mis-read the report because the comparison with the North Western's fares was used only for the basis of limiting the Milwaukee rates and that for such purpose, the comparison was proper even without a showing of comparable operating conditions.

If there has been this misinterpretation of the Commission's report, then there is no danger in the District Court's opinion to the effect that rates can not be found just and reasonable upon comparison with the rates of another carrier without first a showing of similarity of operation conditions. The District Court's opinion merely confirms what the Interstate Commission has itself held. Nor is the court's decision erroneous for having mis-read the report by considering the comparison with the North Western to be the basis for determining the reasonableness of the fares. The opinion had already found that the Commission's order should be set aside because it lacked the basic findings for exercising federal jurisdiction,[21] and in the absence of a basic finding to support the order, the District Court did not need to examine the evidence in order to see if the finding of reasonableness was supported by that evidence. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Chicago M. St. P. & Pac. R. Co.*, 294 U. S. 499, 505.

Consequently, no harm is manifest or of such consequence as to require further argument before this court.

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20. The admission made by the Interstate Commission on the necessity of similarity of operating conditions is not shared by the railroad. The Milwaukee's Statement in No. 307 at pages 10-11 considers the lower court's decision as making it virtually impossible to establish uniform fares because of the impossibility of showing similar operating conditions for any two carriers.

21. Which decision the Solicitor General has accepted in No. 502.

CONCLUSION.

For the foregoing reasons we respectfully submit that the decision of the District Court is correct and these appeals present no substantial question for this court's decision. The judgment of the District Court is simply that the justification for the exercise of federal power does not clearly appear upon the facts in the instant case, and in this determination, the court was correct and its judgment should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 502

UNITED STATES OF AMERICA, *Appellant*,
(Defendant below),

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Appellees*,
(Plaintiffs below).

No. 503

INTERSTATE COMMERCE COMMISSION, *Appellant*,
(Defendant below),

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, *Appellees*,
(Plaintiffs below).

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION OF APPELLEE, MILWAUKEE ROAD COMMUTERS' ASSOCIATION TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT.

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(*Plaintiffs below*).

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION OF APPELLEE, MILWAUKEE ROAD COMMUTERS' ASSOCIATION TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT.

STATEMENT OF THE CASE.

These are appeals by the United States and by the Interstate Commerce Commission from a decree of a three-

judge District Court declaring invalid and setting aside orders of the Interstate Commerce Commission increasing Chicago suburban passenger fares of Chicago, Milwaukee, St. Paul & Pacific Railroad Company (herein called the "Milwaukee Road").

The proceeding before the Interstate Commerce Commission was under Section 13(4) of the Interstate Commerce Act.

All fares involved were intrastate fares, except for fares to two stations in Wisconsin, at the end of one of the suburban lines involved. The orders of the Interstate Commerce Commission which were set aside by the District Court, increased the interstate fares to the two Wisconsin stations to conform to similar increases in the intervening intrastate fares, and the decree invalidating the increase in intrastate fares also invalidated the corollary increase in interstate suburban fares to the two Wisconsin stations.

An earlier appeal by the Milwaukee Road from the same decree of the three-judge District Court is pending in this Court as Case No. 307 of the October, 1956 Term, entitled, "*Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* v. *State of Illinois, Illinois Commerce Commission and Milwaukee Road Commuters' Association.*

The Milwaukee Road filed a jurisdictional statement in connection with the earlier appeal (Case No. 307), and appellees State of Illinois and Milwaukee Road Commuters' Association filed separate motions to affirm.

QUESTIONS AT ISSUE

For a statement of the issues and argument on the points involved, we refer to and incorporate herein the Motion to Affirm filed by Milwaukee Road Commuters' Association in Case No. 307.

Our statement and argument on the present Motion to Affirm will be confined to such additional comment as seems called for by the Jurisdictional Statements of the United States and the Interstate Commerce Commission in the instant appeal.

The grounds upon which the decree of the District Court held invalid the order of the Commerce Commission are:

1. The order of the Commission bases the allowance of an increase in suburban fares on the ground (among others) that the additional revenue that would accrue to the Milwaukee Road from the increased fares would result in "a fair contribution" by the suburban service to the indirect costs of the Milwaukee Road.

The District Court held that there are no findings to support that conclusion.

2. The order of the Commission finds that the fares prescribed therein are "just and reasonable."

The District Court found that there is no evidence to support that finding.

3. The jurisdiction of the Interstate Commerce Commission over the intrastate suburban fares involved rests on the proposition that the action of the Illinois Commerce Commission, in fixing the fares attacked was unjustly and unreasonably discriminatory against interstate commerce.

The fares in question were fixed by the Illinois Commerce Commission, by an order entered just a few months before the proceeding before the Interstate Commerce Commission was instituted. As stated in the Interstate Commission's order, the Illinois Commission's order was fair and reasonable on the evidence presented and upon the theory relied upon and asserted by the Milwaukee Road before the Illinois Commerce Commission. The fact that the Milwaukee Road elected to institute a new proceeding before the Interstate Commission upon a different theory, supported by different evidence, does not deprive the Illinois Commission of its primary jurisdiction over the intrastate rates involved.

The District Court held that there was no showing that the Illinois Commission's action was unjustly or unreasonably discriminatory against interstate commerce.

As set forth in our Motion to Affirm, in Case No. 307, the decision of the District Court upon each of the issues stated, was based upon facts and evidence, and well-established principles of law applicable thereto. There is no substantial question of fact or law involved requiring review by this Court.

The Jurisdictional Statements of the United States and of the Interstate Commerce Commission, filed in the instant appeal, raise no new issues.

The Jurisdictional Statement of the Interstate Commerce Commission follows in general the Jurisdictional Statement of the Milwaukee Road in the earlier appeal (Case No. 307).

The United States confines its Jurisdictional Statement to the question of the jurisdiction of the Illinois Com-

merce Commission over intrastate rates and makes no objections to the decree appealed from insofar as that decree, or the 'opinion' upon which it is based, holds that the findings and evidence are insufficient to sustain the order.

The only questions raised by the Jurisdictional Statements of the United States and the Interstate Commerce Commission that require additional comments here, are:

1. 'The effect of the District Court's decree as it relates to the primary jurisdiction of the Illinois Commerce Commission; and

2. Whether the decree of the District Court was in error insofar as it invalidated that part of the order of the Interstate Commerce Commission that fixed interstate rates to the two suburban Wisconsin stations.

ARGUMENT.

I.

The Effect of the Decree of the District Court, Insofar as It Relates to the Jurisdiction of the Interstate Commerce Commission.

The argument on this point in the Jurisdictional Statements rests on the erroneous assertion that the decree appealed from, or the opinion on which it rests, holds that no evidence could ever be introduced before the Interstate Commerce Commission in a proceeding under Section 13(4) of the Interstate Commerce Act, if that evidence had not been previously introduced before a state regulatory agency.

There is no basis for that assertion. An examination of the District Court's opinion will show that it has no foundation, in fact, or by reasonable inference from what the District Court said.

The pertinent part of the opinion is as follows:

> "In the state commission proceeding, which was initiated by the Milwaukee Road, the latter showed in its exhibits that the depreciation of locomotives and coaches was not included in the out-of-pocket cost. Likewise, in its exhibits in that case it did not include in out of pocket expense certain maintenance of way accounts involving maintenance of facilities, such as roadbed, etc. The comments in the interstate commission's report, in regard to these items, show that they were by the Milwaukee Road deliberately removed from the consideration of the state commission. It follows that facts presented by Milwaukee Road to and relied upon by the interstate commission to support its finding as to an out-of-pocket sub-

urban deficit, were not presented to nor relied on by the Milwaukee Road in the state commission proceeding. If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.

In *North Carolina* v. *United States*, 325 U. S. 507, at 511, the court said:

'Since the enactment of § 13 (4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point — not always easy to mark — is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate.'

Where a railroad seeks the fixing of higher interstate rates by the interstate commission after failing in such endeavor before a state commission, § 13 (4) does not contemplate that the state commission is to be considered only a way-station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us.''

It is clear that the District Court did not rest its decision with respect to the primary jurisdiction of the State Commission over intrastate rates, on any supposed technical rule of evidence. The Illinois Commerce Commission had not, in any sense, acted unfairly or unjustly in fixing the rates complained of. It did not forfeit its primary jurisdiction over intrastate fares and its order could not be nullified as unfair, inequitable or discriminatory.

The repeated statements in the opinions of this Court, that the State Commission has primary jurisdiction over intrastate rates would have no meaning if the rule were otherwise.

II.

The Application of the Decree to Interstate Fares Between Chicago and Suburban Stations in Wisconsin.

The two stations involved are Walworth and Zenda, Wisconsin, which are at the end of the west suburban line of the Milwaukee Road, and are served by one suburban train a day in each direction. The orders of the Interstate Commerce Commission in suit, after approving an increase in the intrastate fares, provided for a corresponding increase in the interstate fares to the two stations at the end of the line.

If the orders were improper as to intrastate rates, they were necessarily improper as to interstate rates which depend on the intrastate rates and the District Court was right in not differentiating between them.

The District Court had equitable jurisdiction over the orders of the Interstate Commerce Commission insofar as they affected interstate as well as intrastate rates.

The District Court clearly acted correctly in remanding to the Interstate Commerce Commission the question of whether there was an independent basis for raising the fares to these two Wisconsin stations.

There is no substantive question of fact or law in this case that requires further argument or review in this Court.

We submit that the Motion to Affirm the Judgment of the District Court should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1956

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

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OCTOBER 1956.

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Interstate Commerce Act, 49 U. S. C. 1, et seq.:	
Section 13 (3)	2, 28
Section 13 (4)	2, 29
United States Code, Title 28:	
Section 1253	2
Section 1336	2
Section 2101 (b)	2

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ——

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

The Interstate Commerce Commission (hereinafter called "the Commission") submits this statement to show that this Court has jurisdiction on appeal from the judgment of the United States District Court for the Northern District of Illinois, entered June 14, 1956, setting aside and enjoining enforcement of an order of the Commission, and that substantial questions are presented by the appeal.

OPINIONS BELOW

The opinion of the three-judge district court for the Northern District of Illinois is not yet reported,

but is reproduced in Appendix A hereto. The judgment of the district court is set forth in Appendix B. The report of the Commission which gave rise to the order set aside and enjoined by the district court is reported at 297 I. C. C. 353, and is set forth as Appendix C to the Jurisdictional Statement heretofore filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in No. 307.

JURISDICTION

This suit was brought under 28 U. S. C. 1336, to set aside and enjoin enforcement of an order of the Commission. The judgment of the district court was entered on June 14, 1956, and the Commission's notice of appeal was filed in the district court on August 13, 1956.

The jurisdiction of the Supreme Court to review the district court's decision by direct appeal is conferred by 28 U. S. C. 1253 and 2101 (b), and is sustained by the following cases: *King* v. *United States*, 344 U. S. 254; *American Trucking Assns.* v. *United States*, 344 U. S. 298; *Frozen Food Express* v. *United States*, 351 U. S. 40.

STATUTES INVOLVED

Involved in this appeal are sections 13 (3) and (4) of the Interstate Commerce Act, 49 U. S. C. 13 (3) and (4), which are set forth in Appendix C hereto.

QUESTIONS PRESENTED

(1) Whether the Interstate Commerce Commission, in directing increases in intrastate passenger fares

pursuant to section 13 (4) of the Interstate Commerce Act, in order to eliminate unjust discrimination against interstate commerce, is precluded from relying upon evidence which had not been introduced at a prior proceeding before the state regulatory commission in which the latter had refused to increase the intrastate fares.

(2) Whether the district court, in setting aside the Commission's order directing increases in intrastate fares, erred in also setting aside an order which authorized increases in interstate fares.

(3) Whether the district court erred in setting aside the Commission's orders increasing both the interstate and intrastate suburban fares because of the absence of a finding as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income, the Commission having found that the increased fares "are necessary so that travel thereunder may make a fair contribution toward [the railroad's] indirect costs and return on investment."

(4) Whether the district court erred in holding that the Commission, in fixing the fares here involved, made an improper comparison with fares previously established for the Chicago and North Western Railway Company.

STATEMENT

In February 1955, the Chicago, Milwaukee, St. Paul and Pacific Railroad (hereinafter "the Milwaukee" or "the railroad") filed with the Commission a petition under sections 13 (3) and (4) of the Act, for

an investigation to determine whether the Milwaukee's existing intrastate fares within the Chicago suburban area, made or imposed under authority of the Illinois Commerce Commission (hereinafter "the state commission") were causing unjust discrimination against interstate commerce, and to determine what fares, if any, should be established in order to remove any such discrimination found to exist.[1] The petition alleged that in July 1952, the Milwaukee applied to the state commission for authority to increase such fares, and that in November 1954 the state commission denied the relief sought, with the result that the railroad was required to perform transportation of passengers within the Chicago suburban area at fares which resulted in an out-of-pocket loss of more than $700,000 per year, causing unjust and unlawful discrimination against interstate commerce.

Following a hearing participated in by the railroad, the state commission, and an association of commuter passengers, the hearing examiner issued his report finding that the existing fares were causing unlawful discrimination, and proposing fare increases in order to remove it. Upon consideration of exceptions filed by the State and the association, and the railroad's reply, the Commission, on November 21, 1955, issued its report, 297 I. C. C. 353.

The Commission's formal findings, set forth in its report (pp. 359–360), are that (1) the railroad's present suburban fares do not produce sufficient revenue

[1] The proceeding is entitled No. 31742, *Chicago Intrastate Suburban Fares of Milwaukee Railroad.*

to cover the out-of-pocket cost of the service, and thus make no contribution toward its indirect costs or to a return on investment;[2] (2) the intrastate suburban fares cause and, unless increased to the extent prescribed, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce; (3) such discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases prescribed (set forth in an appendix to the report, the increases averaging about 21%); (4) the prescribed fares will be just and reasonable, will produce substantial additional revenue, and are necessary so that travel thereunder may make a fair contribution toward the railroad's indirect costs and return on investment, and to enable it to provide adequate and efficient service; (5) the railroad's interstate suburban fares on the same bases prescribed for intrastate suburban fares will be just and reasonable.

On the date the report was issued, November 21, 1955, the Commission entered an order in other proceedings[3] authorizing similar increases in the railroad's interstate suburban fares between Chicago Union Station and two Wisconsin points (Zenda and

[2] The Commission had already found (p. 358) that the out-of-pocket cost of the suburban passenger service exceeded by $306,038 the total revenues from that service; also that the prescribed fare increases would produce about $383,000 in increased revenues, which would eliminate the out-of-pocket deficit and result in a contribution of approximately $77,000 per year to indirect costs and taxes.

[3] Nos. 26550 and 11703, involving the Milwaukee's interstate fares.

Walworth) located within the Chicago suburban area. It did not then order the intrastate fares increased, but on March 2, 1956, the state commission having refused to permit the increases, the Commission entered an order directing the railroad to establish the prescribed intrastate fares by a certain date. Petitions for reconsideration were denied on May 4, 1956, and this suit followed.

THE QUESTIONS ARE SUBSTANTIAL

1. The district court annulled the Commission's order increasing the intrastate fares for the reason, among others, that certain evidence presented by the railroad to the Commission and acted on by it had not first been presented to the state commission. That evidence was in the form of exhibits which included in the out-of-pocket cost of performing the suburban service data as to depreciation of locomotives and coaches used in that service, and figures as to maintenance of facilities, such as roadbed, etc. The district court said that "If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis."

This holding by the district court makes it a condition precedent to any action by the Commission under section 13 (4) that the petitioning railroad must first have presented to the state commission for its consideration the identical evidence presented to the Interstate Commerce Commission. If the district court's holding is permitted to stand, its order re-

manding the case to the Interstate Commerce Commission "for further proceedings not inconsistent with the opinion" will effectively tie the hands of the Commission and make impossible any further action by it except to refer the case again to the state commission. This portion of the decision below is clearly erroneous. This Court and the lower Federal courts have held consistently that the jurisdiction and authority of the Interstate Commerce Commission to increase intrastate rates or fares in order to remove unlawful discrimination against interstate commerce is not affected by the pendency of state commission proceedings or by anything that may be done or not done in such proceedings; also that the Commission has the power under section 13 (4) to order an increase in intrastate rates or fares to remove such discrimination even if the affected carrier has not first requested the state commission to allow such increases. *Florida* v. *United States*, 282 U. S. 194, 210; *State of Illinois* v. *United States*, 101 F. Supp. 36, 40, 47, aff'd, 342 U. S. 930, reh. denied, 343 U. S. 911; *North Carolina* v. *United States*, 128 F. Supp. 718, aff'd, 350 U. S. 805.

2. In annulling the Commission's order increasing the intrastate suburban fares, the district court also set aside and enjoined enforcement of another order of the Commission which increased the *interstate* fares between Chicago and two Wisconsin points suburban to Chicago. These interstate fares not being involved in the intrastate proceeding under section 13 (4) which was the subject-matter of the suit, the

United States and the Commission assumed that they (the interstate fares) must have been inadvertently included in the court's injunction decree. So assuming, they filed a motion to correct the judgment in this respect, also to correct the erroneous holding discussed in the preceding section hereof. The court denied the motion on July 31, 1956, leaving in effect its judgment annulling the increases in both interstate and intrastate fares.

Whether interstate fare increases, as well as intrastate fare increases, may be set aside and enjoined in a suit such as this, where only intrastate increases under section 13 (4) are involved, is a question of substantial importance to the Commission in its administration of the statute, and should be resolved by this Court.

3. The district court held that the Commission's order was invalid also because of the lack of a finding "as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income." And the district court added that "Nor does the commission find that the revenue produced by the intrastate rates proposed by it will constitute not more than a fair proportion of respondent's total income, which finding was held sufficient in *King* v. *United States*, 344 U. S. 254, at 275" (App. A, *infra*, p. 17). We contend that the court below misapplied this Court's decision in the *King* case.

In the *King* case, this Court held that an order issued under section 13 (4) is not deficient for lack of "findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's

total income," where other appropriate findings are made. The alternate findings found adequate in the *King* case were that the intrastate rates there involved "are abnormally low and are not contributing their fair share to the revenues required * * * to render adequate and efficient service and to operate profitably," and that the proposed increases in those rates "will substantially increase respondents' revenues therefrom, and will constitute not more than a fair proportion of respondents' total income." 344 U. S., at 275.

In the instant case, the corresponding findings of the Commission are that the higher fares which it prescribed would eliminate an annual (based upon 1954 traffic) out-of-pocket loss of $306,000 on the suburban traffic and result in a contribution of about $77,000 annually to indirect costs and taxes, and that such increased fares "are necessary so that the travel thereunder may make a fair contribution toward respondents' indirect costs and return on investment," etc.

The Commission's finding that the higher fares which it prescribed "are necessary" to produce a "fair contribution" is the equivalent of the finding approved in the *King* case that the increased rates there involved would "constitute not more than a fair proportion of [the railroads'] total income." Clearly, a finding that specific fares are "necessary" to produce a fair proportion negatives the notion that they will do more than that.

The district court found the same finding of the Commission to be further deficient in that it is phrased in terms of "a fair contribution toward respondents'

indirect costs and return on investment" rather than as "a fair proportion of respondents' *total income*," the language of the finding sustained in the *King* case.[4] To the contrary, we submit that there is no practical distinction between a fair contribution (over and above direct or out-of-pocket costs) to "indirect costs and return on investment" and a fair proportion of "total income." Moreover, the finding criticized by the court below is substantially the same as the finding said to be lacking in *North Carolina* v. *United States*, 325 U. S. 507, 520, that the rate there in issue "did not contribute its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property directed to the transportation service."

In view of the continuing size and prevalence of deficits in railroad passenger operations,[5] it is important to eliminate uncertainty as to the requirements of Section 13 of the Interstate Commerce Act.

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[4] In the instant case, the court below stated flatly that "A fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment."

[5] In Docket No. 31954, the Commission recently instituted a general investigation concerning the deficit from passenger-train service and allied services performed in passenger-train operations by railroads subject to the jurisdiction of this Commission; the railroad passenger revenues, operating expenses and other income items relating to net railway operating income; the rate of return upon investment in road equipment property which is used in such service; the rules of this Commission governing the separation of operating expenses, railway taxes, equipment rents and joint facility rents between freight service and passenger service; and possible ways and means of reducing and eliminating the railroad passenger-train deficit which has been incurred in recent years.

4. The court below also held that it was improper for the Commission to base its finding that the higher intrastate fares would be just and reasonable upon a comparison with the suburban fares of the Chicago & North Western Railway Company without proof that operating conditions of the two carriers were comparable. We believe that the court misread the Commission's report. The Commission has held frequently that for rate comparisons on a revenue basis (e. g., per ton-mile or car-mile) to be valid it must appear that transportation conditions are similar for the compared traffic. See, e. g., *Newport News Shipbuilding & Drydock Co.* v. *D. & R. G. W. R. Co.*, 284 I. C. C. 674. In the instant case, the Commission made no comparison of rates in terms of the revenue which they would produce. The Commission did find that "there is a 'strong similarity' between the suburban territory served by [Milwaukee] and that served by the North Western, the two sets of fares, as approved by this and the Illinois commission, having formerly been on a parity." Thereupon, the Commission used this comparison of service territories and historic rate parity as the basis for concluding that fares higher than those prescribed by the Commission (and which Milwaukee sought), by discouraging travel, would not result in a substantial increase in Milwaukee's revenues (App. A. *infra*, p. 16). We submit that the use of such a comparison for this purpose clearly was proper, even without a showing of comparable operating conditions.

CONCLUSION

For the reasons stated, the questions presented by this appeal are substantial and of public importance. It is respectfully submitted that probable jurisdiction should be noted.

ROBERT W. GINNANE,
General Counsel,

LEO H. POE,
Associate General Counsel,
Interstate Commerce Commission,
Washington 25, D. C.

OCTOBER 1956.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 56 C. 681

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEFENDANTS

June 14, 1956

Before ELMER J. SCHNACKENBERG, Judge of the United States Court of Appeals for the Seventh Circuit, and PHILIP J. SULLIVAN and WALTER J. LA BUY, District Judges.

SCHNACKENBERG, *Circuit Judge.* This is an action to set aside and enjoin the enforcement of an order[1] of the Interstate Commerce Commission[2] authorizing the Chicago, Milwaukee, St. Paul and Pacific Railroad Company[3] to put into effect intrastate rates or fares for Chicago area suburban service higher than

[1] Entered March 2, 1956, based on report dated November 21, 1955 (297 I. C. C. 353).

[2] Herein sometimes referred to as the "interstate commission."

[3] Herein sometimes referred to as the "Milwaukee Road."

those authorized by the Illinois Commerce Commission.[4]

The Milwaukee Road by petition to the interstate commission requested an investigation under § 13 (4) of the Interstate Commerce act[5] to determine whether intrastate suburban passenger rates approved by the state commission unjustly discriminated against interstate commerce. It asked that, if found so to discriminate, the rates be adjusted so as to remove the discrimination. The order of the interstate commission which we now consider is based upon its report of November 21, 1955, in which it refers to the Milwaukee Road as "respondent" and Milwaukee Road Commuters' Association as "protestant."

This report states that "on an out-of-pocket basis respondent shows a deficit of $724,511, while protestant shows an income of $9,701. For expenses other than the Union Station, protestant's lower figures are accounted for by the elimination of any allowance for depreciation and of certain accounts for maintenance of way not included in respondent's study before the Illinois commission." The report quotes the dollar amounts of depreciation which the interstate commission considers proper direct charges to the service and hence are out-of-pocket costs. It similarly considers certain maintenance of way expenses.

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[4] Herein sometimes referred to as the "state commission."

[5] 49 U. S. C. A., § 13 (4). "Whenever * * * the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes * * * any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination."

The report points out that these depreciation and maintenance of way charges were not included in respondent's showing before the Illinois commission, but were included in its showing before the interstate commission. The report states that respondent's explanation for the prior omission was "its impression that, even without them, it had shown a considerable deficit from this service." The report adds: "This explains but does not excuse its incomplete showing before the Illinois commission."

The report finds:

> "Summarizing, the total revenues from the passenger-carrying portion of the suburban service were $1,799,140, the out-of-pocket cost, not including nonpayroll taxes or return, was $2,269,404, and the credit for nonrevenue passengers $164,226, resulting in a total out-of-pocket deficit of $306,038.
>
> If the fares were increased an average of 20 percent as in *Computation and Multiple Fares, Illinois and Wisconsin,*[*] *supra,* plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually."

The report also sets forth as follows:

> "Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore

[*] 288 I. C. C. 15.

and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as, in the words of respondent's traffic witness, there is 'a strong similarity' between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois commission, having formerly been on a parity."

Referring to the net railway operating income of respondent in 1954, the report states that it earned "from its freight operations $37,393,050, and suffered a deficit from its passenger operations of $22,824,532, resulting in a net railway operating income of $14,568,518. To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, State and interstate."

The report also makes the following findings:

"1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.

2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 (4) of the Inter-state Commerce Act.

3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That such prescribed fares will be just and reasonable for the future, will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

5. That respondent's interstate suburban fares on the same basis as herein prescribed for intrastate application will be just and reasonable for the future."

1: While the interstate commission finds that the intrastate rates which it approves "would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000, annually" and that those fares "will produce substantial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment;" at no place does the commission make any findings as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income. In fact the interstate commission makes no finding as to what the Milwaukee Road's total income was for the year in question, and likewise no finding as to what would be a fair proportionate share of total income of the road which the intrastate traffic now under consideration should contribute. These data are not found by the interstate commission either as specific findings in dollars or in any other form. Nor does the commission find that the revenue produced by the intrastate rates proposed by it will constitute not more than a fair proportion of respondent's total income, which finding was held insufficient in *King* v. *United States*, 324 U. S. 254, at 275.

In *North Carolina* v. *United States*, 325 U. S. 507, at 516, the court said:

> "But the question posed by the Commission's conclusion was whether the particular North Carolina railroads were obtaining from North Carolina's intrastate passenger rates their fair part of such funds as were required to enable these particular railroads to render adequate and efficient service. The Commission made no findings as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income."

The report which we are considering asserts that intrastate traffic should make a larger contribution, but there is no finding as to what contribution would be a fair proportion of the railroad's total income.

The rule is established that the interstate commission must make basic findings required to support its order. *Florida* v. *United States*, 282 U. S. 194, at 215; *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, at 86.

An order of the interstate commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454, at 462; *United States* v. *Chicago, M., St. Paul & P. R. Co.*, 294 U. S. 499, at 504.

In *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, at 86, the court said:

> "The Commission's failure specifically to report the facts and give the reasons on which it concluded that under the circumstances the use of the average or group basis is justified leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity

> of the order. Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this."

See also 15 C. J. S. 534.

The report of the interstate commission completely ignores that, in determining intrastate fares, a controlling inquiry is what contribution from the intrastate traffic would constitute a fair proportion of the railroad's income. In the case at bar it is not sufficient that the interstate commission found that the prescribed rates will "make a fair contribution toward respondent's indirect costs and return on investment." A fair proportion of a carrier's total income is not the same as a contribution to indirect costs and return on investment. Paying all of the costs of suburban service and, in addition, making a contribution to the other costs of the railroad, may well be more than contributing a fair proportion of Milwaukee Road's total income. Nor is it sufficient that the interstate commission found that to the extent that the suburban service "fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs," it discriminates against its freight operations. This finding is no substitute for one as to what it should contribute as a fair proportionate share of the railroad's total income. Without the latter finding the order of the interstate commission cannot stand. This is not inconsistent with *State of Illinois* v. *United States*, 101 F. Supp. 36, affirmed 342 U. S. 930. There was in that case a specific subsidiary finding [281 I. C. C. 552].

> "The fares approved herein will yield a return after taxes of about 3.2 percent, and an

> average increase of about 20 percent or $1,300,000 per annum, which *we find to be the approximate measure of the revenue discrimination* against interstate commerce resulting from petitioner's present multiple and commutation fares." [Emphasis added.]

In that case the commission also found "That in connection with its minimum and round-trip suburban fares, petitioner has not shown any person-locality or *revenue discrimination against interstate commerce.*" (Finding 2, 281 I. C. C. 552.) [Emphasis added.]

2. Even under the rationale of the interstate commission, it is somewhat difficult to ascertain from its report the precise obligation of the suburban service to which the intrastate fares, as fixed thereby, are to contribute after meeting the out-of-pocket deficit.

The report at one place says that if the fares were increased an average of 20 per cent,[7] plus an additional increase to a minimum of 25 cents per trip, the increased revenue based on the year 1954 would eliminate the out-of-pocket deficit and result in *a contribution to indirect costs and taxes*, of approximately $77,000 annually. Based upon the same year, the report at another place says that to the extent that this service fails to meet the out-of-pocket cost and make *all the contribution that it reasonably can to respondent's indirect costs*, it increases the latter's passenger deficit and results in an undue burden on its freight operations. In finding 4 the report states that the prescribed fares are necessary so that the travel thereunder may make a *fair contribution toward respondent's indirect costs and return on invest-*

[7] Actually they were increased about 21 percent according to the counsel for the Milwaukee Road, or 28 percent according to counsel for the protestants.

ment. If a *contribution* is to be made toward the satisfaction of an obligation, it is obvious that the extent of the obligation must be fixed; otherwise no one can know what the size of the contribution should be. We are here speaking of an involuntary contribution. The limitless requirements implicit in the parts just cited from the report are reminiscent of public fund raising campaigns which used as their slogan "Give till it hurts". That was a legitimate civic or patriotic appeal. However, we are here confronted with the imposition of an involuntary contribution being exacted by legal means. To be sustained, it must be based upon a finding of the extent of the obligation. It cannot be supported by a vague reference to an unascertained amount of "indirect costs and taxes" or what the suburban service can reasonably contribute to the Milwaukee Road's "indirect costs," or "a fair contribution toward respondent's indirect costs and return on investment."

3. We are confronted with the question of whether the evidence before the interstate commission supports its finding that the intrastate fares which it has prescribed will be just and reasonable for the future. This finding rests on an averment in the report that the comparison with the fares of the Chicago and North Western Railway Company is more persuasive, as, in the words of respondent's traffic witness, "there is a strong similarity between the suburban territory served by the Milwaukee Road and that served by the North Western. * * *."

The evidence of J. K. Pain, the traffic witness referred to, does not support this averment. He actually said that he believed there is a *difference* in the operation of the two roads and that he was not prepared on the subject of cost or expense, which was a little bit out of his line. He added that an

endeavor was made to figure an increase on an equitable basis "that would recover our losses * * * and would be fair to the suburban passenger." When asked if Milwaukee Road's territory was "pretty similar" to North Western's, Mr. Pain asked, "Do you mean geographically or in operation or what?" When the examiner said that he was talking about the nature of the suburban community, the witness answered "Yes, you could probably say there is a strong similarity." Thereupon the attorney for the Milwaukee Road stated "we do not offer these North Western fares as a criteria (*sic*) as to what our fares should be."

There was no evidence offered showing similarity of equipment, service or operating conditions. On the other hand, the record shows that the lines are not comparable. The suburban North Western rates are based upon an operation of 72 steam locomotives and only 3 diesel locomotives as against a complete diesel operation on the Milwaukee. A comparison of the cost of the Milwaukee suburban operation under steam and diesel locomotives shows that the diesel operation costs less than steam. That a comparison cannot be properly made between a steam operation and a diesel operation has been recognized by the interstate commission in a case in which North Western Chicago suburban fares were raised to their present level, and the commission stated, in referring to the analysis upon which its order was based, "The above analysis relates to an existing suburban operation for the year 1951 and obviously does not contemplate the cost of some other suburban operation such as might be encountered with diesel engines, gallery-type cars and Budd Cars."[8] Moreover, the interstate commission

[8] 288 I. C. C. 15, at 23.

has taken note of the fact that the Milwaukee division of the North Western carries no freight whatsoever and that the entire cost there must be borne by passenger-traffic. *Commutation Fares between Chicago and Wisconsin*, 279 I. C. C. 773, 777–778.

The Milwaukee suburban operation is alleged to be much more comparable to the suburban operation of the Burlington and Rock Island than it is to the North Western operation. Those are the other two Chicago railroads using diesel locomotives in their suburban service. The commission, nevertheless, ignores that comparison, and holds, in effect, that the Illinois commission was wrong in giving weight to it. Instead, the proposed report applies the North Western formula without any evidence in the record of similarity of conditions necessary to make that formula applicable. The use of the North Western formula was not justified. Without sufficient evidence of comparability in operation, there is no ground for fixing the Milwaukee Road's fares at the North Western level, or for finding that the resulting fares are just and reasonable.

We hold that the evidence does not support the finding of the interstate commission that the prescribed rates are just and reasonable. Nor can a carrier justify unreasonably high rates on intrastate business on the ground that only in that way is it able to meet losses on its interstate business. *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, at 483; *Smyth* v. *Ames*, 169 U. S. 466 at 541, 42 L. Ed., 819 at 847.

4. In the state commission proceeding, which was initiated by the Milwaukee Road, the latter showed in its exhibits that the depreciation of locomotives and coaches was not included in the out-of-pocket cost. Likewise, in its exhibits in that case it did not include in out-of-pocket expense certain maintenance of way

accounts involving maintenance of facilities, such as roadbed, etc. The comments in the interstate commission's report, in regard to these items, show that they were by the Milwaukee Road deliberately removed from the consideration of the state commission. It follows that facts presented by Milwaukee Road to and relied upon by the interstate commission to support its finding as to an out-of-pocket suburban deficit, were not presented to nor relied on by the Milwaukee Road in the state commission proceeding. If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.

In *North Carolina* v. *United States*, 325 U. S. 507, at 511, the court said:

> "Since the enactment of § 13 (4), as before its enactment, a state's power over intrastate rates is exclusive up to the point where its action would bring about the prejudice or discrimination prohibited by that section. When this point—not always easy to mark—is reached, and not until then, can the Interstate Commerce Commission nullify a state-prescribed rate."

Where a railroad seeks the fixing of higher intrastate rates by the interstate commission after failing in such endeavor before a state commission, § 13 (4) does not contemplate that the state commission is to be considered only a way station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us.

Plaintiffs have made various other charges against the order of the interstate commission, which we do

not find it necessary to decide, in view of the fact that our views herein expressed sufficiently decide the case now before us.

In this type of case we are not required, under rule 52 (a), Federal Rules of Civil Procedure, or otherwise, to make findings of fact. *Despatch Shops* v. *Railroad Retirement Board*, 60 F. Supp. 106, affirmed 154 F. 2d 417; *In Re Chicago, M. St. P. & P. R. Co.*; *Abrams* v. *Scandrett*, 138 F. 2d 433.

For the reasons hereinbefore set forth, the order of the Interstate Comerce Commission is set aside and the subject matter thereof is remanded to that commission for further proceedings not inconsistent herewith. A permanent injunction will issue forthwith, as prayed.

A true copy:

Teste:

_____,

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

UNITED STATES OF AMERICA

DISTRICT COURT OF UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 56 C 681

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEFENDANTS

Decree

This case has been heard on the complaint; the answers of defendants thereto; the record before the Interstate Commerce Commission in the proceeding known as Docket No. 31742 of that commission, and the arguments of counsel for plaintiffs and defendants, and the court being fully advised in the premises, orders, adjudges and decrees:

1. The order of the Interstate Commerce Commission, dated March 2, 1956 (and the prior report and order dated November 21, 1955, upon which the order of March 2, 1956, was based) entered in proceeding Docket No. 31742, are beyond the power, and are an abuse of

authority, of the Interstate Commerce Commission.

2. Said report and orders are not supported by the findings of, nor by the evidence before, the Interstate Commerce Commission in the proceeding, commission's Docket No. 31742, in which they were entered.

3. Said report and orders of the Interstate Commerce Commission are void, and are set aside; and the subject matter is remanded to said Commission for further proceedings not inconsistent with the opinion this day filed herein.

4. The Interstate Commerce Commission is permanently enjoined from enforcing said report and orders, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company (herein called "the Milwaukee Road") is permanently enjoined from continuing to give effect to the fares prescribed therein.

5. The Milwaukee Road shall return forthwith to the persons from whom collected all monies received by it as excess fares under the order of this court dated April 18, 1956.

6. Judgment is entered in favor of Illinois Commerce Commission and Milwaukee Road Commuters' Association, and against the Milwaukee Road for costs.

(S) ELMER J. SCHNACKENBERG,
United States Circuit Judge.

(S) PHILIP L. SULLIVAN,
United States District Judge.

(S) WALTER J. LABUY,
United States District Judge.

Dated: June 14, 1956.

APPENDIX C

The pertinent provisions of the Interstate Commerce Act (49 U. S. C.) involved in this case are as follows:

Section 13 (3):

> Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.

Section 13 (4):

Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

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AUG 26 1957
JOHN T. FEY, Clerk

No. 28

In the Supreme Court of the United States

OCTOBER TERM, 1957

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, AND MILWAUKEE ROAD COMMUTERS' ASSOCIATION, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

ROBERT W. GINNANE,
General Counsel,
CHARLIE H. JOHNS, Jr.,
Associate General Counsel,
Interstate Commerce Commission,
Washington 25, D. C.

AUGUST 26, 1957.

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court on August 13, 1956. (R. 484). The jurisdiction of this Court is conferred by 28 U. S. C. 1253, 2101 (b) and 2325, and is sustained by *King* v. *United States*, 344 U. S. 254. Probable jurisdiction was noted on December 10, 1956. (R. 486).

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the appendix, *infra*, pages 47–49.

QUESTIONS PRESENTED

The four questions are:

1. Whether the district court erred in setting aside the Commission's orders increasing both the interstate and intrastate suburban fares because of the absence of a finding as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income, the Commission having found that the increased fares "are necessary so that travel thereunder may make a fair contribution toward [the railroad's] indirect costs and return on investment."

2. Whether the district court erred in holding that the Commission, in fixing the fares here involved, made an improper comparison with fares previously established for the Chicago and North Western Railway Company.

3. Whether the Interstate Commerce Commission, in directing increases in intrastate passenger fares pursuant to section 13 (4) of the Interstate Commerce Act, in order to eliminate unjust discrimination against interstate commerce, is precluded from re-

lying upon evidence which had not been introduced at a prior proceeding before the State regulatory commission in which the latter had refused to allow an increase in the intrastate fares.

4. Whether the district court, in setting aside the Commission's order directing increases in intrastate fares, erred in also setting aside an order which authorized increases in interstate fares.

STATEMENT

This case involves one phase of the serious passenger-train deficit of the railroads which this Court had occasion to consider in *King* v. *United States*, 344 U. S. 254, 260–262. That condition has not improved since the *King* case.[1] *Increased Freight Rates, 1956*, 298 I. C. C. 279, 296.

The passenger service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, herein at times referred to as the Milwaukee, is no exception to the general pattern. While this carrier's Chicago suburban service, relatively speaking, constitutes less of a drain upon its freight revenues than its passenger-

[1] In Docket No. 31954, the Commission has instituted a general investigation concerning the deficit from passenger-train service and allied services performed in passenger-train operations by railroads subject to the jurisdiction of this Commission; the railroads' passenger revenues, operating expenses and other income items relating to net railway operating income; the rate of return upon investment in road and equipment property which is used in such service; the rules of this Commission governing the separation of operating expenses, railway taxes, equipment rents and joint facility rents between freight service and passenger service; and possible ways and means of reducing or eliminating the railroad passenger-train deficit. See the Commission's Annual Report for 1956 at page 53.

service as a whole (R. 36), in 1954 the revenues from the suburban service contributed less than the bare out-of-pocket cost of performing the service.

In an effort to improve its revenues from the suburban service,[2] Milwaukee, in 1952, sought authority from the Illinois Commerce Commission to eliminate some of its trains and to increase its fares by amounts which, taking into consideration the economy effected through the proposed elimination of such trains, would give sufficient revenue to permit operation of the service without an out-of-pocket loss. After hearings, the State Commission found that the suburban service was already being operated without an out-of-pocket loss and denied the request in toto (R. 77).

Milwaukee then filed its petition with the Interstate Commerce Commission, alleging that the intrastate fares for the Chicago suburban service resulted in unjust discrimination against interstate commerce and shippers in interstate commerce, in violation of section 13 (4), and prayed for an order (1), directing increases in the intrastate fares by amounts which would remove the discrimination, (2) permitting increases in its interstate suburban fares, and (3) granting certain other relief of a technical nature[3] (R. 24).

A hearing was held on the petition and evidence was introduced by the Milwaukee, the State Commission, the Milwaukee Road Commuters' Association

[2] The suburban operation of this carrier is almost wholly intrastate, but includes two points in Wisconsin.

[3] The modification of certain outstanding orders prescribing maximum interstate and minimum intrastate one-way and round-trip fares.

and certain shippers of freight. The railroad's evidence consisted primarily of a showing of costs, based on a formula of the Commission's Bureau of Accounts, Cost Finding and Valuation, greatly exceeding revenues. The carrier included, at the insistence of the examiner (R. 160, 171, 181), information concerning the fares of the Chicago and North Western Railway Company and, in addition thereto, certain information on costs which the Commission's cost finding staff had indicated was desirable (R. 367). Thereafter, the examiner issued his proposed report in which he found that the existing fares caused unlawful discrimination against interstate commerce. He proposed fare increases, but not as great in the aggregate as those sought by the railroad. He also proposed increases in the interstate fares from and to the two Wisconsin points on the same bases as those recommended for intrastate application.

Upon consideration of exceptions to the examiner's report, the Commission issued its report and order of November 21, 1955. The Commission found that (1) the railroad's existing suburban fares did not produce sufficient revenue to cover the out-of-pocket cost of the service; (2) the intrastate suburban fares cause and, unless increased to the extent prescribed, would continue to cause undue, unreasonable, and unjust discrimination against interstate commerce; (3) such discrimination could and should be removed by establishing for such intrastate travel fares no lower than the bases prescribed; (4) the prescribed fares would be just and reasonable, would produce substantial additional revenue, and were necessary so that travel

thereunder could make a fair contribution toward the railroad's indirect costs and return on investment, and to enable it to provide adequate and efficient service; and (5) the railroad's interstate suburban fares on the same bases prescribed for intrastate suburban fares would be just and reasonable.

The order, while authorizing increases in the interstate fares[4] from and to the two Wisconsin points and other relief of a technical nature, did not require the immediate establishment of the increases in the intrastate suburban fares. Instead, following its customary procedure, the Commission allowed a period of 60 days for approval of the increases in those fares by the State Commission. This approval not having been given, the Commission, by its order of March 2, 1956, directed the Milwaukee to establish intrastate fares set forth in the report of November 21, 1955.

The State of Illinois, the Illinois Commission and the Commuters' Association then filed their complaint (R. 2) in the court below attacking the order of March 2, 1956. A temporary restraining order was also requested but was denied upon the condition that the excess fares be impounded by the railroad, to be returned to the passengers in the event the Commission's orders should be set aside (R. 440).

After a hearing on the merits, the court rendered its opinion (R. 460), holding the order of March 2, 1956, affecting the intrastate fares, to be invalid on the grounds:

---

[4] The increased interstate fares were published and became effective on January 29, 1956. (State of Illinois Motion to Affirm, page 9.)

1. That findings requisite to support an order under section 13 (4) are lacking,

2. That the evidence does not permit a finding that the prescribed intrastate fares are just and reasonable, and

3. That in reaching its conclusion that the existing intrastate fares were discriminator the Commission did not limit its consideration to the same evidence which had previously been presented to the State Commission.

The court, in its decree (R. 470–471), set aside not only the order of March 2, 1956 concerned with the intrastate fares, but also the order of November 21, 1955 approving increases in the interstate fares. The court also ordered the railroad to return to the passengers all monies impounded. However, by order of June 18, 1956 (R. 474–476) the court stayed its decree pending disposition of this appeal, and subject to certain stated conditions concerning the impounded funds.

SUMMARY OF ARGUMENT

I. Under the statutory authority invoked and the context of the situation presented here, the Commission's findings are adequate to support its order.

Section 13 (4) of the Act, giving the Interstate Commerce Commission jurisdiction over intrastate rates or fares which discriminate against interstate commerce, is inextricably interwoven with the National Transportation Policy and Section 15a (2) which charge the Commission with the duty of administering the Act in such a manner as to aid in the development and maintenance of an economically sound national

trasportation system. This section must be read with that purpose in mind. Cf. *Schwabacher* v. *United States*, 334 U. S. 182, 193–194.

The intrastate suburban service of the Milwaukee, although capable of contributing more, did not, for the period here considered, pay its out-of-pocket costs. This service constitutes a drain upon the total revenues of the carrier and a discrimination against the interstate system. Such discrimination is particularly harmful to the Milwaukee whose rate of return upon the entire operation for the period involved was not more than 2 percent.

The Commission specifically found that the service at the existing fares made or imposed by state authority is being conducted at an out-of-pocket loss, that such low fares constitute an undue burden on interstate commerce, that the discrimination can be removed by increasing the existing fares by the amounts prescribed in the report, that the prescribed fares will be just and reasonable, will produce substantial additional revenues, and are necessary so that this service may make a fair contribution to the indirect costs and return, and will enable the carrier to provide adequate and efficient service.

Considering the context of the situation presented, these findings are the equivalent of those cited with approval in the *King, North Carolina* and *Florida* cases. In the *North Carolina* case this Court stated that section 13 (4) authorized the Commission to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs, and to yield a fair

return on the value of property devoted to the transportation service, both interstate and intrastate, and added that the order in the *Florida* case was sustained because it was based on findings supported by evidence that the intrastate rate "was abnormally low and less than reasonably compensatory * * * 'insufficient under all the circumstances and conditions to cover the full cost of the service'". Here, even under the prescribed basis, the revenues from the segment of the railroad's business will not cover the full cost of the service.

The ruling of the court below that the findings are inadequate is in essence a hyper-technical requirement for the use of particular words to express ideas. It places form over substance and would require, as a lower court stated in *State of New York* v. *United States*, 98 F. Supp. 855, 859, "a piling on of more words without an essential change in substance." The Court's criticism of the Commission's findings is wholly without merit.

II. The Commission's finding that the increased fares prescribed by it are just and reasonable is supported by substantial evidence. The evidence shows that those fares will result in revenues which will cover the out-of-pocket costs, disregarding nonpayroll taxes and return, and will allow a contribution of only $77,000 to the indirect costs. That contribution was so small that the Commission did not deem it necessary to discuss, and the parties made no issue over, the railroad's showing of additionally indirect costs substantially in excess of $1,000,000. The cost evidence alone affords ample support for the Commis-

sion's finding. Other evidence of record concerning the fares of competitors and other carriers serving the Chicago suburban area as well as a 14-year history of increasing patronage of the Milwaukee's suburban service also supports the conclusion from a value of service point of view.

The Chicago suburban fares of the North Western were introduced by the railroad at the insistence of the examiner and were used by him and by the Commission as a guide to value of service. The fares of the two carriers had in a former proceeding been placed on the same level and the Commission was of the view that the record here did not justify increases in the Milwaukee's fares greater than had been allowed the North Western since that former proceeding. Thus the existing fares of the North Western were used to restrict the increases sought by the Milwaukee on a cost basis.

The lower court disregards the evidence on costs and misreads the Commission's finding as being based solely upon this comparison with the fares of the North Western.

III. Section 13 (4) of the Act cannot be construed to require limitation of the evidence presented before the Interstate Commerce Commission to that presented in a prior proceeding before a State commission. Such an interpretation would change the function of the Interstate Commerce Commission in cases such as this to that of an appellate tribunal and would prevent the Interstate Commerce Commission from obtaining other evidence, as it did in this case, which

in its judgment, was necessary for the proper determination of the case.

This Court and the lower Federal Courts have held consistently that the jurisdiction and authority of the Interstate Commerce Commission to increase interstate rates or fares in order to remove unlawful discrimination against intrastate commerce is not affected by the pendency of state commission proceedings or by anything that may be done or not done in such proceedings; also that the Commission has the power under section 13 (4) to order an increase in intrastate rates or fares to remove such discrimination even if the affected carrier has not first requested the state commission to allow such increases.

The rulings of this Court and lower Federal Courts on this subject recognize the importance of intrastate rates to the revenues of the carriers and the necessity for prompt action on an allegation of discrimination. Such action is required by those provisions of the Act looking to the development and maintenance of an adequate national rail transportation system.

IV. The lower court also erred in setting aside the Commission's order of November 21, 1955, approving the increases in the interstate fares to and from the two Wisconsin points. Appellees did not in their petitions for reconsideration challenge the validity for those increases and could not challenge them in the court action. *United States* v. *L. A. Tucker Truck Line*, 344 U. S. 33. Moreover, appellees did not challenge them in the court below and the court's opinion does not deal with them. The opinion is concerned only with the order of March 2, 1956, prescribing the

intrastate fares. Notwithstanding this, the decree sets aside the order of November 21, 1955, approving the increase in the interstate fares. Since an order of the Commission is presumed to be valid and since a complaining party carries a heavy burden of making a convincing showing of its invalidity, we urge that a court, in setting aside the order, must clearly indicate in what respects such order is faulty. Cf. *Virginian Ry.* v. *United States*, 272 U. S. 658. This the lower court failed to do when the United States and the Commission filed their motion to correct the decree.

ARGUMENT

I. The Commission's order of March 2, 1956, prescribing intrastate fares is supported by adequate findings

Although there are cases in which this Court has found orders of the Commission to be invalid for lack of adequate findings, it has not, even in cases involving intrastate rates, made a fetish of findings. The findings, of course, must be specific enough so that the court may "know what the decision means before the duty becomes ours [the court's] to say whether it is right or wrong," *United States* v. *C. M. St. P. & P. Ry. Co.*, 294 U. S. 499, 511, but the findings "will vary with *the statutory authority invoked and the context of the situation presented.*" *Alabama G. S. R. Co.* v. *United States*, 340 U. S. 216, 228. (Emphasis supplied). Moreover, in cases involving the Commission's jurisdiction over intrastate fares, this Court has required only "reasonable determinations." *Florida* v. *United States*, 292 U. S. 1, 9. And as this court stated in *United States* v. *Louisiana*, 290 U. S. 70, 80:

> There are no formal requirements for the findings to be made by the Commission in this type of case * * *.

Rigid requirements of specific findings would, in the language of the court in *State of New York* v. *United States*, 98 F. Supp. 855, 859, affirmed, 342 U. S. 882, result "in a piling on of more words without an essential change in substance." As we shall demonstrate, the opinion of the lower court would require just that. A careful reading of the lower court's opinion in this case will readily reveal that its requirements go to form rather than to substance. However, before dealing with this, we desire to consider "the statutory authority invoked and the context of the situation presented."

A. The statutory authority invoked

To begin with, all provisions of the Interstate Commerce Act must be administered and enforced with a view to carrying out the National Transportation Policy of 1940, which places upon the Commission the duty among others, "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; * * * *all to the end of developing, coordinating and preserving a national transportation system by* * * * rail * * * adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." [Emphasis supplied.] Similarly, section 15a (2) provides that the Commission when exercising its rate-making powers must give due consideration, among other things, to the need of revenues sufficient to enable the

carriers under honest, economical and efficient management to provide an adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service. There is a "dove-tail relation"[5] between the purpose of section 15a (2) and the provisions of section 13 (4) under which the Commission's order of March 2, 1956 was issued. The latter section provides that whenever the Commission finds, after full hearing, that any intrastate rate or fare causes "undue, unreasonable or unjust discrimination" against interstate commerce it shall prescribe the rate or fare that will in its judgment remove the discrimination. The obvious purpose of section 13 (4), as this Court pointed out in the *Wisconsin* case (pages 589–591), was to restrain undue limitation by states of the earnings of the national railway system in performing intrastate transportation. As the Court there stated (pages 585–586):

> Intrastate rates and the income therefrom must play a most important part in maintaining an adequate national railway system * * *. The effective operation of the Act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system.

This Court observed that if intrastate commerce does not make its equitable contribution to the revenue requirements of the railroads, interstate commerce may have to bear the burden of making up the deficiency

---

[5] *Wisconsin Railroad Co.* v. *C. B. & Q. R. Co.*, 257 U. S. 563, 586, and *Florida* v. *United States*, 292 U. S. 1, 5–6.

through high interstate rates. The provisions of the National Transportation Policy, of section 15a (2), of section 13 (4), and of other sections of the Interstate Commerce Act not here involved show beyond question that the development and maintenance of an economical and efficient national railway transportation system is specifically made a matter of primary national concern. The Act, therefore, must be read with this purpose in mind. *Schwabacher* v. *United States*, 334 U. S. 182, 193–194.

B. The context of the situation presented

The case here is based to a large extent upon cost studies submitted by the railroad and by the Commuters' Association. In its report the Commission discussed the areas of difference between the two cost studies,[6] and, after making adjustments, found that while the revenue from the suburban service amounted to $1,963,366 ($1,799,140 plus credit for non-revenue passengers of $164,266), the out-of-pocket cost alone, excluding non-payroll taxes and return on investment,[7] was $2,269,404, resulting in an out-of-pocket deficit of $306,038. Thus, beyond question the suburban service constitutes a drain upon the total revenues of this carrier, and a discrimination against the interstate sys-

[6] The railroad's study followed in principle certain methods found in the formula developed by the Commission's Bureau of Accounting, Cost Finding and Valuation, and included certain information which the Commission's Cost Finding Staff had requested. The Commuters' study followed, with certain modifications, the study submitted by the railroad in the state proceeding. (R. 133, 242, 358, 367).

[7] Return would include such an item as interest of $93,009 on investment in diesel locomotives (R. 360).

tem. Such discrimination is particularly harmful where the rate of return from the entire operation does not approach a fair return.* The Commission stated that to the extent the:

> suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs it increases respondent's passenger deficit and results in an undue burden upon its freight operations, state and interstate (R. 35–36).

The Commission then proceeded to determine what contribution the suburban service reasonably could be expected to make. The railroad was proposing increases averaging 28.8 per cent, or a total of about $518,086 annually, based upon the 1954 volume of traffic. The Commission was of the view that such "drastic increases" would discourage travel and not result in a substantial increase in revenue. The Commission stated (R. 34-35):

---

* For the year 1954, the Milwaukee's net railway operating income on freight was over $37,000,000, while its passenger deficit amounted to over $22,000,000, leaving a total net railway operating income of only approximately $14,000,000. This amount of income reflects a return of only 1.89 percent on net investment (computed from the relevant accounts in the carrier's annual report for 1954, which by stipulation is part of the record (R. 315), according to the formula used by the Commission in *Increased Freight Rates, 1951*, 297 I. C. C. 17, 25, footnote 1). Based upon the Commission formula in that case for determining return on elements of value, and using the elements for this carrier as contained in the study by the Commission's Bureau of Accounts, Cost Finding and Valuation (Elements of Value of Property of Class I Line-Haul Carriers used in Common Carrier Service as of January 1, 1955), the return would be 2 percent.

Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as, in the words of respondent's traffic witness, there is "a strong similarity" between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois commission, having formerly been on a parity.

In a former proceeding conducted jointly by this Commission and the State Commission in 1951, the two Commissions had approved a common level of Chicago suburban fares for this carrier, and the Chicago and North Western Railway Company. Since that proceeding, the North Western's level of fares has been increased on an average of about 20 percent, and the Commission was of the view that the record here justified no greater increase for the Milwaukee.[1] The Commission found that similar increases here, based upon the 1954 volume of traffic, would eliminate the out-of-pocket deficit (excluding, of course, non-payroll taxes and return), and result in a contribution to indirect costs and taxes of approximately

[1] This particular feature of the case is discussed in detail in the following chapter of this brief.

$77,000 annually. Since the approved increases would result in revenues only approximating the out-of-pocket costs, no further consideration was given to the fully-distributed costs,[10] the Commission obviously being of the view that the small contribution obtained through the fares prescribed was all the suburban service could reasonably make.

Upon these and other subsidiary findings, the Commission made the following ultimate findings concerning the intrastate fares:

> 1. That respondent's present suburban fares do not produce sufficient revenue to cover the out-of-pocket cost of the service and thus make no contribution toward its indirect costs nor to a return on investment.
>
> 2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 (4) of the Interstate Commerce Act.
>
> 3. That such undue, unreasonable, and unjust discrimination can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.
>
> 4. That such prescribed fares will be just and reasonable for the future, will produce substan-

[10] The record contains evidence that in addition to the out-of-pocket loss the railroad suffers an additional loss of over one million dollars on a fully-distributed cost basis, which assigns to the suburban service a share of the expense incurred generally with other traffic (R. 382, 388, 428).

> tial additional revenue, and are necessary so that the travel thereunder may make a fair contribution toward respondent's indirect costs and return on investment, and to enable it, under honest and efficient management to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

We submit that these ultimate findings, amply justified by the subsidiary findings discussed above, are adequate to support the Commission's order of March 2, 1956. They show that the service at the existing fares made or imposed by state authority is being conducted at an out-of-pocket loss, that such loss constitutes an undue discrimination against interstate commerce, that the discrimination can be removed by increasing the existing fares by the amounts prescribed in the report, that the prescribed fares will be just and reasonable, will produce substantial additional revenues, and are necessary so that this service may make a fair contribution to the indirect costs and return, and will enable the carrier to provide adequate and efficient service. Surely "in the context of the situation presented" more is not required. Indeed, under decisions of this Court Finding No. 4, stating in part, that the prescribed fares "are necessary so that travel thereunder may make a fair contribution * * * to enable it [the carrier] * * * to provide adequate and efficient service * * *" justifies the order. For example, in *North Carolina* v. *United States*, 325 U. S. 507, 514, involving the intrastate passenger fares of four of the railroads operating in that State, this Court stated that

an ultimate finding that the North Carolina intrastate passenger traffic was "not contributing its fair share of the revenue required to enable respondents to render adequate and efficient transportation service" if based on findings and supported by evidence would justify the order. This Court pointed out that in *Florida* v. *United States*, 292 U. S. 1, involving the intrastate rates on logs in Florida, it had stated that section 13 (4) authorized the Commission "to raise intrastate rates so that the intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs, and to yield a fair return on the value of property devoted to the transportation service, both interstate and intrastate", and added that the Commission's order in the *Florida* case was sustained because it was based on findings supported by evidence that the intrastate rate "was abnormally low and less than reasonably compensatory * * * 'insufficient under all the circumstances and conditions to cover the full cost of the service'". Here, of course, even under the prescribed bases, the revenues from this segment of the railroad's business will not cover the full cost of the service.

Later, in *King* v. *United States*, 344 U. S. 254, 275, in considering the adequacy of ultimate findings made by the Commission in another case, the Court stated in part:

> * * * The Commission states that the Florida intrastate rates "are abnormally low and are not contributing their fair share to the revenues required * * * to render adequate and efficient service and to operate profitably, and thereby

> accomplish the purpose of the Interstate Commerce Act * * *." Also * * * it says that the establishment of the proposed increases in intrastate rates "will substantially increase respondents' revenues therefrom, and will constitute not more than a fair proportion of respondents' total income * * *." * * * More is not needed.

Significantly, these findings were held sufficient in spite of the lack of other findings "as to what contribution from intrastate traffic would constitute a fair proportion of the railroad's total income" and "as to what amount of revenue was required to enable these railroads to operate efficiently."

Th. Commission's findings in this case, particularly Nos. 1 and 4 above, are the equivalent of those cited with approval in both the *North Carolina* and *King* cases.

The lower court, however, was of the view that more was needed. It held (R. 464) that the Commission's order prescribing the new level of intrastate fares was invalid because of the lack of a finding "as to what contribution from the intrastate suburban traffic would constitute a fair proportion of the railroad's total income." It stated that the report did not find, either in specific dollar amounts or in any other form, what the railroad's *total income* was or what would be a *fair proportionate share* of total income from the suburban service. Realizing that this Court in the *King* case had held such findings not to be essential if others were made, the Court added, "Nor does the Commission find that the revenue pro-

duced by the intrastate rates proposed by it will constitute not more than a fair proportion of respondent's total income, which finding was held sufficient in *King* * * *." The Court indicated, however, that a finding similar to one made in the *Illinois Central* section 13 (4), case (281 I. C. C. 537), hereinafter discussed, would have been adequate. Let us examine the validity of those criticisms.

In the first place, the Court, in referring to total income, apparently means total revenues, for the Commission in its report does state that the total net railway operating income for 1954 (the significant income figure) was approximately $14,000,000, (in round figures) which, as we have previously shown, amounted to a return of not more than 2 percent. The total revenue for 1954 is shown in the carrier's annual report, which was stipulated into the record (R. 315). However, we are unable to understand the relevancy or materiality of the comparison of total revenues with the revenues from the suburban service even if the comparison is made over a period of years. The plain fact here is that on a cost basis this traffic was not even paying its out-of-pocket costs, to say nothing of the indirect costs.

Secondly, as this Court stated in the *Wisconsin* case, *supra*, "The effective operation of the Act will reasonably and justly require that intrastate traffic should pay the fair proportionate share of the cost of maintaining an adequate railway system" (p. 586). On an unprofitable segment, a fair proportionate share of the cost of maintaining an adequate railway system is clearly all of the out-of-pocket costs of that seg-

ment, plus all the contribution that it can reasonably make toward the indirect costs. Thus, the Commission stated in this case (R. 35–36):

> * * * To the extent that this suburban service fails to meet the out-of-pocket costs and make all the contribution that it reasonably can to respondent's indirect costs, it increases respondent's passenger deficit and results in an undue burden upon its freight operations, state and interstate * * *.

The determination of the amount of a reasonable contribution toward indirect costs involves the exercise of an informed judgment based primarily upon value of service and not upon cost. Upon the facts of this case, the Commission found that a contribution over and above out-of-pocket costs (excluding nonpayroll taxes and return) of approximately $77,000 was all that could be reasonably expected from this non-profitable service. Stated otherwise, the suburban service's fair proportionate share of the cost of maintaining an adequate railway system in this case was $2,269,404 (the out-of-pocket cost), plus $77,000 or a total of $2,346,404.

Moreover, while the Commission's report does not contain the precise finding found adequate in the *King* case, that the revenues produced by the intrastate rates prescribed by it will constitute *not more* than a fair proportion of the carrier's total income, an equivalent finding was made. Thus, in Finding No. 4 above, the Commission found that the increased fares "are necessary so that the travel thereunder may make a fair contribution toward respondent's in-

direct costs and return on investment * * *." Clearly, a finding that prescribed fares are "necessary" to make a fair contribution toward the carrier's costs and return negatives the notion that they can do more than yield a fair proportion of the carrier's total income.

The district court found the same finding of the Commission to be further deficient in that it is phrased in terms of "a fair contribution toward respondents' *indirect costs and return on investment*" rather than as "a fair proportion of respondents' *total income*", the language of the finding sustained in the *King* case. We submit that the finding of "fair contribution toward indirect costs and return on investment," coupled with the subsidiary finding that the prescribed fares will return revenue sufficient to eliminate the out-of-pocket deficit constitute, for all practical purposes, a finding of the fair proportion of total income. Those two findings are the means of measuring such a proportion. The difference in the wording here is attributable to the "context of the situation presented." Moreover, the finding criticized by the court below is substantially the same as the finding said to be lacking in *North Carolina* v. *United States*, 325 U. S. 507, 520, that the fare there in issue "did not contribute its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service."

In further support of our view that the lower court, in its criticism of the lack of a specific finding as to what contribution from the intrastate suburban serv-

ice would constitute a fair proportion of the railroad's total income, was stressing form over substance, in its statement that its view is not inconsistent with *State of Illinois* v. *United States*, 101 F. Supp. 36, because in the report there involved the Commission had made the following specific subsidiary finding:

> The fares approved herein will yield a return after taxes of about 3.2 percent, and an average increase of about 20 percent or $1,300,000 per annum, which *we find to be the approximate measure of the revenue discrimination* against interstate commerce resulting from petitioner's present multiple and commutation fares. [Emphasis added.]

The equivalent findings here are:

> If the fares were increased an average of 20 percent as in *Commutation and Multiple Fares, Illinois and Wisconsin*, *supra*, plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes of approximately $77,000 annually (R. 34).
>
> * * * * *
>
> 2. That respondent's present intrastate suburban fares, made or imposed by authority of the State of Illinois, cause and, unless increased to the extent herein set forth, will continue to cause undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 (4) of the Interstate Commerce Act.
>
> 3. That such undue, unreasonable, and unjust discrimination can and should be removed

by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto (R. 36).

The court also criticizes the Commission's report as being too vague concerning the "precise obligation" of the suburban service to which the fares are to contribute after meeting the out-of-pocket deficit. The Commission, of course, found the out-of-pocket cost (excluding nonpayroll taxes and return) to be $2,269,404 annually, and prescribed a scale of fares which would contribute $77,000 above that toward the additional indirect cost of over $1,000,000. The "obligation" of any service above out-of-pocket costs is that amount which it can reasonably be called upon to contribute to the overhead. It is not a "precise" obligation but depends rather upon noncost considerations, such as value of service. The obligation, of course, does exist, for obviously a carrier cannot survive if its various services pay only their respective out-of-pocket costs. But the extent of the obligation, even upon the same service, will vary from time to time. The Commission, in the exercise of its informed judgment, was of the view that from a value-of-service consideration the sum of $77,000 above out-of-pocket costs was all that the suburban service could reasonably be called upon to contribute to the indirect costs. On this record, therefore, $77,000 is the "obligation" of this service.

The court states that the "extent of the obligation must be fixed." If by this it means that the total system overhead cost burden, namely, the obligation of all services collectively, should have been determined

so that "one can know what the size of the contribution should be" from the suburban service, we submit that such an exercise was clearly not necessary. At this point the problem is not concerned essentially with costs, although we pause here to note that the record contains evidence available as a guide showing the results of certain statistical apportionments of costs as a possible additional obligation of the suburban service after meeting the out-of-pocket deficit if only costs were being considered.[11] The problem, rather, as noted above, is a noncost or value-of-service matter upon which an informed judgment must be made. The Commission in an exercise of its informed judgment has made "reasonable determinations" here. *Florida* v. *United States*, 292 U. S. 1, 9. This court requires no more.

II. Substantial evidence supports the Commission's finding that prescribed intrastate fares are just and reasonable

The court below also held that the Commission's finding that the prescribed intrastate fares would be just and reasonable was based solely and erroneously upon a comparison with the commutation fares of the Chicago & North Western Railway Company, and that this finding is thus unsupported by evidence (R. 467–469). We contend that in so holding the court below misread the Commission's report.

As we have shown above, the Milwaukee based its case primarily upon costs, and was asking for increased fares which would cover more of the cost of rendering the service. The prescribed fares, while

[11] See footnote 10, page 18, *supra*.

substantially less than those sought by the carrier, will result in revenues which cover the out-of-pocket costs ($2,269,404), disregarding nonpayroll taxes and return, and allow a contribution of only $77,000 to the indirect costs. This contribution toward indirect costs was such an insignificant amount that the Commission did not deem it necessary to discuss and the parties made no issue over the railroad's showing of indirect costs substantially in excess of $1,000,000. This cost evidence alone affords ample support for the Commission's finding that the increased fares would be just and reasonable.

The railroad also introduced evidence to show that the fares, which it was proposing on a cost basis, were not out of line with the fares of its competitors (R. 155–159). Its Assistant General Passenger Agent Pain testified that the street car and bus fare for the slower service of the Chicago Transit Authority within the city was a straight 20 cents per ride, while the Milwaukee's existing fares on a 46-ride basis from certain common points ranged from 11.9 cents to 20 cents; that from beyond the Chicago city limits, from such a point as Morton Grove, the fare for the slower service of the American Coach Bus Lines was 32 cents per ride; as compared with the railroad's fare of 25 cents on a 46-ride basis; that from Northbrook, the comparable fare for the slower service of the Chicago, North Shore and Milwaukee Railroad was 42 cents, while the Milwaukee's fare was 31.3 cents; that for the slower combination ride from Elgin over the Chicago, Aurora and Elgin Railroad and the Chicago Transit Authority the fare was 55 cents on a 60-

ride ticket, while the railroad's fare was 43.9 cents; and that for the combination ride from Roselle by use of the Hayden Motor Coach Company and the Chicago Transit Authority the fare was 55 cents, while the railroad's fare was 34.4 cents.

As the Commission points out in its report, after a joint hearing by the two commissions in 1951, the commutation fares of this railroad had been placed on the same level as those of the North Western. In 1953, the commutation fares of the North Western had been increased an average of about 20 percent, and in 1955 the minimum charge per ride had been increased to 25 cents (R. 30). During the administrative hearing in the instant proceeding, when it became apparent that the Milwaukee was not going to introduce the existing North Western scale of fares, the examiner asked that a comparison be made and introduced in exhibit form (R. 160). The requested comparison was made and introduced into the record (R. 171 and 181). This evidence showed that the Milwaukee was requesting increases substantially greater than had been allowed the North Western. When the witness failed to volunteer any explanation for requesting an increase larger than that allowed the North Western, the examiner subjected him to a searching examination during which the witness attempted to justify the proposal for increases greater than those allowed the North Western on the basis of a difference in operations but agreed there was a "strong similarity" in the nature of the suburban communities served by the two railroads (R. 177–180).

Counsel for the railroad then offered the exhibits with the following reservation (R. 181):

> * * * we wish to make our position clear, that we do not offer them as a criteria of what our fares should be, or as any suggestion on our part that these are the fares that the Milwaukee Road desires in its operation. The exhibits are offered solely in response to the Examiner's request.

Thereafter, the Commuters' Association offered evidence showing the time-schedules and suburban fares of the dieselized lines[12] of the Chicago, Burlington & Quincy Railroad Company, and the Chicago and Rock Island Pacific Railroad Company, which were on a lower basis than those of the Milwaukee (R. 284–287 and 420). The Commuters' Association also introduced into the record a comparison in rates per mile of the suburban fares with the regular passenger fares (R. 348–350). The railroad then introduced evidence showing that the suburban fares of the electric lines of the Illinois Central Railroad Company and the Chicago, South Shore and South Bend Railroad were higher than those proposed (R. 351–353).

Upon this evidence, the Commission was of the view that the "drastic increase" proposed by the carrier had not been justified from a value-of-service point of view. It thought that such increases would be largely self-defeating, and undertook to limit the

[12] The Milwaukee had converted to diesel operation in 1954. At the time of the hearing the North Western was 53.7 percent dieselized (R. 347).

increases to the level of the fares of the North Western. Such increases would result in revenues approximately equal to the out-of-pocket cost of the service, or, as stated by the Commission, it would eliminate the out-of-pocket deficit (excluding nonpayroll taxes and return) and result in a contribution to the indirect costs and taxes of about $77,000. The Commission stated (R. 34–35):

> If the fares were increased an average of 20 percent as in *Commutation and Multiple Fares, Illinois and Wisconsin, supra*, plus the additional increase to a minimum of 25 cents per trip, the increased revenue based on the 1954 movement would be about $383,000, which would eliminate the out-of-pocket deficit and result in a contribution to indirect costs and taxes, of approximately $77,000 annually.
>
> Protestant shows that the proposed fares are somewhat higher than certain of the fares of the dieselized lines of the Burlington and the Chicago, Rock Island and Pacific Railroad Company in the Chicago area, while respondent shows that they are somewhat lower than certain fares which the commissions have approved for the electric lines of the Illinois Central Railroad Company and the Chicago South Shore and South Bend Railroad in the Chicago area. However, we think that the comparison with the fares of the North Western is more persuasive, as, in the words of respondent's traffic witness, there is "strong similarity" between the suburban territory served by it and that served by the North Western, the two sets of fares, as approved by this and the Illinois

commission, having formerly been on a parity.

Respondent shows that its suburban traffic has changed little in recent years and thus urges that the 1951 increase had no adverse effect on the movement of the traffic. It does not follow that the drastic increases now proposed, particularly for distances over 9 miles, would have no such adverse effect. There is no adequate support for the proposed increase in the 25-ride fares from 11.5 to 12.5 times the round-trip fares. We found that a similar increase proposed by the North Western, by discouraging travel, would not result in a substantial increase in revenue, and a like finding is warranted here.

The court below was of the view that the Commission had rested its finding of reasonableness solely upon the comparison with the fares of the North Western, and ruled that such a basis could not be used in the absence of a showing of "comparability in operation". We submit that the court obviously misread the Commission's report. The report shows beyond question that the comparison with the fares of the North Western was used to determine the single element of value of service. The Commission was of the view that the "drastic increases" proposed by the Milwaukee would discourage travel and not result in a substantial increase in revenues. It therefore restricted the proposed increases to those already allowed the North Western because the "two sets of fares as approved by this and the Illinois commission having [had] formerly been on a parity". The prescribed increases resulting in revenues approxi-

mating out-of-pocket cost are obviously just and reasonable on a cost basis alone.[13] And the Commission referred to the fares of the North Western solely for the purpose of cutting down, or placing a ceiling upon the fare increases sought by Milwaukee. Accordingly, contrary to the view of the court below, it was irrelevant whether the equipment, service or operating conditions of the two carriers were comparable.[14]

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[13] Indeed, under the law of the State of Illinois lower fares could not be prescribed. The Supreme Court of that State has held, in connection with the suburban fares of this carrier, that the State is without power to require this traffic to be carried at a loss, or without *substantial compensation* over its proper cost. *Flemming* v. *Illinois Commerce Commission*, 57 N. E. (2d) 384, 390–392.

[14] Even under the lower court's mistaken view of the use of the comparisons, the ruling is at variance with long established principles for ratemaking recognized by this Court as well as by the Interstate Commerce Commission. The lower court ruled in effect that rate comparisons have no probative value in the absence of a showing of comparability in operation. Both this Court and the Commission have held that a comparison of rates on traffic moving in the same or adjacent territory has probative value. *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, 480; *Tidewater Associated Oil Co.* v. *A. T. & S. F. Ry. Co.*, 278 I. C. C. 586, 589, and *Summer & Co.* v. *Erie R. Co.*, 262 I. C. C. 43, 46. Moreover, in *Commutation & Multiple Fares between Illinois & Wisconsin*, 288 I. C. C. 15 (the 1953 North Western proceeding), which the lower court quotes from in its opinion, the same basis of interstate Chicago suburban fares was approved for the steam operation of the North Western and for the electric operation of the Chicago, North Shore & Milwaukee Ry. Co. In *Illinois Central Multiple Fares in Chicago Area*, 281 I. C. C. 537, 551, and 289 I. C. C. 133, 138–140, the Interstate Commerce Commission compared the prescribed fares of that electric line with those of the North Western and other carriers operating in the

III. Section 13 (4) cannot be interpreted to require the limitation of the evidence presented before the Interstate Commerce Commission to that presented in a prior proceeding before the State Commission

In the cost study which it submitted in the State Commission proceeding, the Milwaukee employed an abbreviated formula and omitted such out-of-pocket items as depreciation and maintenance-of-way expenses, on the assumption that the abbreviated study was sufficient to show that its out-of-pocket costs were greatly in excess of existing or prospective revenues (R. 359). There, it will be recalled, the railroad was simply seeking additional revenues sufficient to cover its out-of-pocket costs after the elimination of certain of its trains. In the proceeding before the Interstate Commerce Commission, the railroad's cost study followed more closely the formula developed by the Commission's cost finding staff and included items for depreciation and maintenance-of-way expenses at the out-of-pocket level.[15] However, here again the railroad omitted non-payroll taxes and return on investment from its study even though, as the witness pointed out, one item of return (on the diesel locomotives) amounted to $93,000 (R. 359–360).

Chicago area. Comparisons of a similar nature were also made in *Commutation Fares Between New Orleans & Mississippi*, 278 I. C. C. 567; *Chicago, South Shore & South Bend Railroad Fares*, 279 I. C. C. 663; and *Fares, Chicago, South Shore & South Bend Railroad*, 291 I. C. C. 665.

[15] Moreover, at the suggestion of the Commission's cost finding staff, the railroad introduced evidence explaining in more detail its comparisons of expenses with revenues (R. 367) and upon the insistence of the examiner, the North Western's scale was introduced (R. 160, 171, 181).

The lower court, after referring to the fact that the Commission in its report had indicated that the railroad should have made a more complete showing of costs in the State proceeding, stated (R. 469–470):

> * * * If different evidence is to be offered or a different basis of fares is to be urged before the interstate commission, the state commission should have been given a chance to fix fares on the same evidence and the same basis.
>
> * * * * * * *
>
> Where a railroad seeks the fixing of higher intrastate rates by the interstate commission after failing in such endeavor before a state commission, § 13 (4) does not contemplate that the state commission is to be considered only a way station in a journey to the interstate commission. In the instant case justification for the exercise of the federal power to nullify state rates does not clearly appear from the record before us.

The ruling makes it a condition precedent to any action by the Commission under section 13 (4) that the petitioning railroad must first have presented to the State Commission for its consideration the identical evidence presented to the Interstate Commerce Commission. Such a ruling, if allowed to stand, would change the function of the Interstate Commerce Commission in cases such as this to that of an appellate tribunal and would prevent the Commission from requiring or receiving additional evidence which, in its judgment, was necessary for the proper determination of the case. This Commission, of course, readily agrees that the presentation in the state proceeding

should be thorough and the purpose of the statement in its report was to encourage carriers to make such a presentation. However, the court's statement that section 13 (4) *requires* such procedure is clearly erroneous.

This Court and the lower Federal courts have held consistently that the jurisdiction and authority of the Interstate Commerce Commission to increase intrastate rates or fares in order to remove unlawful discrimination against interstate commerce is not affected by the pendency of state commission proceedings or by anything that may be done or not done in such proceedings; also that the Commission has the power under section 13 (4) to order an increase in intrastate rates or fares to remove such discrimination even if the affected carrier has not first requested the state commission to allow such increases.

Thus, in *Florida* v. *United States*, 282 U. S. 194, the Commission, acting under the authority of Section 13 (4), had ordered increases in certain intrastate rates called the "Cummer Scale." That scale of rates had not been prescribed by the Florida Railroad Commission and was not the result of any affirmative action on its part. It was therefore contended that the order exceeded the authority of the Interstate Commerce Commission because the intrastate rates were not "made or imposed" by authority of the State within the meaning of section 13 (3) of the Interstate Commerce Act. This Court said, however, that the rates were maintained in intrastate commerce subject to the authority of the State and were published as required by its laws and that therefore the rates might be re-

garded as made by the authority of the State and within the purview of the Interstate Commerce Act unless its provisions disclosed an intention to exclude intrastate rates of this sort. In holding to the contrary, the Court stated (p. 210):

> * * * But it is clear that the fundamental purpose of the Congress in enacting section 13, subdivisions (3) and (4), was to reach intrastate rates that were found to result in unjust discrimination against interstate commerce. It was not the fact that the rate was affirmatively prescribed by the State, but that it was maintained as an intrastate rate, and as such was inimical to the proper interests of interstate commerce, that led the Congress to give to the Interstate Commerce Commission express authority to take cognizance of that rate and to prescribe the intrastate rate that should be charged thereafter in order to remove the undue discrimination. See *Board of Railroad Commissioners* v. *Great Northern Railway Company*, 281 U. S. 412, 424–428. The provision of section 13 (3) for notice to, and conference with, the authorities of the State, is important not only where the rates have been prescribed by the State, but also where they are in force with the permission of the State and, as intrastate rates, would otherwise be subject to the jurisdiction of the State. To hold, as some of the appellants urge, that there can be no adjustment of intrastate rates by the Interstate Commerce Commission so far as may be needed to protect interstate commerce until the State itself has first "sat in judgment on the issue of the lawfulness of those intrastate rates" would

be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority.

In *North Carolina* v. *United States*, 128 F. Supp. 718 (E. D. N. C.), affirmed, 350 U. S. 805, the railroads sought and obtained an order from the Interstate Commerce Commission increasing intrastate rates pursuant to section 13 (4) without having first exhausted the remedies as to those rates given by state law. The court, in affirming the order, said that the contention that the Interstate Commerce Commission was without jurisdiction until remedies under state law had been exhausted "is without merit". Accord: *Illinois* v. *United States*, 101 F. Supp. 36, 47 (N. D. Ill.), affirmed, 342 U. S. 930, rehearing denied, 343 U. S. 911.

Those interpretations recognize the importance of intrastate rates to the revenues of the carriers and the necessity for prompt action on an allegation of discrimination. Prompt and unfettered action by the Interstate Commerce Commission is in complete harmony with, and indeed is required by, the provisions of the Interstate Commerce Act. The provisions of section 13 (3) and (4) delegating power to the Commission to increase discriminatory intrastate rates in the interest of the carrier revenue, was but one of the many provisions of the 1920 Act looking to the development and maintenance of adequate national rail transportation service. As expressed in *New England Divisions* Case, 261 U. S. 184, 189–190,

> Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Rail-*

> *road Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585. Therefore, the effort of Congress has been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to ensure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission, new powers were conferred and new duties were imposed.

In the *Florida* case, *supra*, this Court, by the following quoted language, indicated clearly that the authority granted by section 13 (4) is to be construed in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system (pp. 210–211):

> The power of the Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute. [Citations omitted.] In the exercise of this power, the Congress has given to the Commission authority not only to remove an undue prejudice as between persons or localities, but to establish a state-wide level of intrastate rates when this is found to be necessary to accomplish the purpose of the statute.

In construing the statute this Court has held that the general provision of section 13 (4) prohibiting "unjust discrimination against interstate commerce" and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 (secs. 416, 422, 41 Stat. 484, 488). There is what this Court has called a "dovetail relation" between the two provisions. The authority granted by section 13 (4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.

As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra; New York* v. *United States, supra*, pp. 585, 586.

The fundamental policy adopted by the 1920 Act has been adhered to and has been enlarged by subsequent legislation, particularly the Transportation Act of 1940 and the National Transportation Policy adopted as a part of that legislation. See *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 80–81;

Texas v. *United States*, 292 U. S. 522, 530–531; *I. C. C.* v. *Parker*, 326 U. S. 60, 66–68, and particularly *Schwabacher* v. *United States*, 334 U. S. 182, 193–194, in which the Court said:

> This Court has recently and unanimously said in reference to this Act, "Congress has long made the maintenance and development of an economical and efficient railroad system a matter of primary national concern. Its legislation must be read with this purpose in mind." *Seaboard Air Line R. Co.* v. *Daniel*, 333 U. S. 118.

Accordingly, we submit that the decision below is clearly erroneous in holding that the Interstate Commerce Commission, in a proceeding under section 13 (3) and (4) may not consider evidence which was not submitted to the State Commission.

IV. The order dated November 21, 1955, approving increases in the interstate fares was not attacked before the Commission nor in the Court action and the Court erred in also setting aside that order

After the Commission had approved the increases in the suburban fares between the two Wisconsin points and Chicago, the railroad filed an appropriate schedule which became effective on January 29, 1956. Thereafter, the State Commission and the Commuters Association filed petitions for reconsideration of the Commission's report of November 21, 1955, in which they argued that the report was in error in several respects. Their objections were not directed to the interstate fares approved in the Commission's order of November 21. The petition of the Commuters

Association did ask that the operation of the order of November 21 be stayed, but when read in context and considering that the interstate fares had already become effective, the request was clearly not directed at those fares.

The Commission's order of March 2, 1956, refers to petitions for review of the *report* of November 21 and denies those petitions. It does not mention the *order* of November 21, thereby clearly indicating that, in the Commission's view, the *order* was not involved.

The complaint in the court below alleged that plaintiffs were bringing the action "as representatives of the public, and particularly of the passengers who ride the suburban trains of the Milwaukee road *between Chicago and the northern boundary of Illinois on the North Line* and between Chicago and Elgin on the West Line * * *." (R. 21). It sought to have set aside "an order of the Interstate Commerce Commission dated March 2, 1956 (and the prior report and order dated November 21, 1955, upon which the order of March 2, 1956 was based) fixing intrastate rates of fare for suburban passenger service between *Chicago and Illinois State Line* on the so-called 'North Line' and between Chicago and Elgin, Illinois, on the so-called 'West Line' of the Milwaukee road" (R. 2). [Emphasis supplied.]

The complaint obviously was not concerned with the interstate fares and, of course, could not attack them since plaintiffs had not pressed the issue in their petitions for reconsideration. *United States* v. *L. A.*

Tucker Truck Line, 344 U. S. 33, and *W. J. Dilbur* v. *United States*, 101 F. Supp. 506, aff'd, 344 U. S. 883.

The validity of the interstate increases was not litigated in the Court below and is not mentioned in the Court's opinion, except in one place where the Court quotes the ultimate findings from the Commission's report (R. 463). The Court's opinion is limited to the consideration of "an order" "entered March 2, 1956" authorizing the railroad "to put into effect intrastate rates or fares" (R. 460); and concludes with the following paragraph:

> For the reasons hereinbefore set forth, *the order* of the Interstate Commerce Commission is set aside and the subject matter thereof is remanded to that commission for further proceedings not inconsisfent herewith. A permanent injunction will issue forthwith, as prayed. [Emphasis supplied.]

Notwithstanding the fact that the order of November 21 approving the interstate fares was not litigated before the Court nor discussed, in its opinion, the decree of June 14, 1956, holds that order along with the late order involving the intrastate fares (1) to be beyond the power and an abuse of authority of the Interstate Commerce Commission, (2) not supported by the findings of nor by the evidence before the Interstate Commerce Commission, and (3) void (R. 471).

The United States and the Interstate Commerce Commission, assuming that the order of November 21, 1955, approving the interstate fares had been in-

advertently included in the decree, filed a motion to correct.[16] The court denied the motion.

As we show above, neither in their petition for reconsideration before the Interstate Commerce Commission nor in their complaint did appellees attack the validity of the Commission's approval of the interstate fares. The court below therefore could not pass upon that part of the Commission's action. But assuming, *arguendo*, that the lower court could properly rule upon the Commission's order approving the interstate fares, we submit that, in setting aside such an order, the court must indicate, at least in a general way, what it deems to be the error committed by the Commission. As this Court stated in *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 512–513 (quoting from earlier cases):

> "Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, 602. The Commission considered that it had, and we find no reason to doubt that it had, the evidence before it that was needful to the discharge of its duty to the public and to the regulated

[16] The motion also requested that the ruling to the effect that the Commission may not consider evidence not previously presented in the state proceeding be deleted from the opinion (R. 480).

railroad. "With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive." *Interstate Commerce Commission v. Union Pacific R. Co.*, 222 U. S. 541, 550.

Since the order is presumed to be valid and a complaining party carries a heavy burden of making a convincing showing of its invalidity, we urge that the Commission is entitled to know in what respects its action is faulty when a Court sets aside its order. In this respect, the view of this Court in *Virginian Ry. v. United States*, 272 U. S. 658, 675, is appropos. There the lower Court sustained the Commission's order but delivered no opinion. This Court said:

> Unless an opinion indicating the grounds of the decision is delivered, a defeated party may often be unable to determine whether the case presents a question worthy of consideration by the appellate court. This is particularly true, where the case is in equity and the decree is entered upon a hearing involving complicated facts. For being in equity, matters of fact as well as of law are reviewable; and the reviewable issues of law are rarely sharply defined by

requests for rulings. The failure to accompany the decree by an opinion may thus deprive litigants of the means of exercising a sound judgment on the propriety of an appeal. And the appellate court, being without knowledge of the grounds of the decision below, is denied an important aid in the consideration of the case, and will ordinarily be subjected to much unnecessary labor.

We submit that even if the order approving the interstate fares had been contested before the Court, the opinion should have stated the ground for setting it aside.

CONCLUSION

For the foregoing reasons, the judgment of the lower court should be reversed.

Respectfully submitted.

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AUGUST 1957.

APPENDIX

National Transportation Policy. (49 U. S. C. note preceding section 1):

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 13 (3) and (4). (49 U. S. C. 13 (3) and (4):

(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or prac-

tice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classi-

fications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Section 15a (2). (49 U. S. C. 15a (2)):

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.